



# Journal of the House

State of Indiana

114th General Assembly

First Regular Session

Fiftieth Meeting Day

Tuesday Morning

April 26, 2005


The House convened at 10:00 a.m. with the Speaker in the Chair.

The invocation was offered by Reverend Jerry Williams, Ben Davis Christian Church, Indianapolis, the guest of Representative Philip D. Hinkle.

The Pledge of Allegiance to the Flag was led by Representative Peggy M. Welch.

The Speaker ordered the roll of the House to be called:

T. Adams	Klinker
Aguilera	Koch
Alderman	Kromkowski
Austin	Kuzman
Avery	L. Lawson
Ayres	Lehe
Bardon	Leonard
Bauer	J. Lutz
Becker	Mahern
Behning	Mays
Bischoff	McClain
Borders	Messer
Borrer	Micon
Bottorff	Moses
Bright	Murphy
C. Brown	Neese
T. Brown	Noe
Buck	Orentlicher
Budak	Oxley
Buell	Pelath
Burton	Pflum
Cheney	Pierce
Cherry	Pond
Cochran	Porter
Crawford	Reske
Crooks	Richardson
Davis	Ripley
Day	Robertson
Denbo	Ruppel
Dickinson	Saunders
Dobis	J. Smith
Dodge	V. Smith
Duncan	Stevenson
Dvorak	Stilwell
Espich	Stutzman
Foley	Summers
Friend	Thomas
Frizzell	Thompson
Fry	Tincher
GiaQuinta	Torr
Goodin	Turner
Grubb	Ulmer
Gutwein	VanHaften
E. Harris	Walorski
T. Harris	Welch
Heim	Whetstone
Hinkle	Wolkins
Hoffman	Woodruff
Hoy	Yount
Kersey	Mr. Speaker

Roll Call 563: 95 present; 5 excused. The Speaker announced a quorum in attendance. [NOTE:  indicates those who were excused.]

## RESOLUTIONS ON FIRST READING

### House Resolution 81

Representatives Burton and Grubb introduced House Resolution 81:

A HOUSE RESOLUTION urging Hoosiers to offer prayers and support for the families of the men and women killed in action while serving in the United States Armed Forces and especially for those killed while fighting the war on terrorism and protecting democracy throughout the world.

*Whereas, The torch of patriotism burns brightly in Indiana and throughout the United States in support of our country and its armed forces;*

*Whereas, On Flanders fields and the beaches of Normandy, from the frozen mountains of Korea to the steaming jungles of Vietnam, from the burning sands of the Kuwaiti and Iraqi deserts to the mountains of Afghanistan, and at the Pentagon on September 11, 2001, over 27,000 Hoosiers have answered the call of freedom and have paid the ultimate price;*

*Whereas, Mindful of these sacrifices, Hoosier men and women fighting the war on terrorism have responded to their country's call without hesitation;*

*Whereas, These brave men and women are supported at home through prayers, sacrifices, and the love of their families;*

*Whereas, All Hoosiers should remember these troops and their families in their thoughts and prayers;*

*Whereas, The Indiana House of Representatives ardently supports the troops currently fighting against terrorism;*

*Whereas, The nation will be forever indebted to those who, in the call of duty, lost their lives in Operation Iraqi Freedom and during ongoing pacification efforts in Iraq and Afghanistan, including Specialist Brian Clemens, Petty Officer 3rd Class Jason Profit, Lance Corporal David Fribley, Specialist Gregory Sanders, Specialist William A. Jeffries, Sergeant Duane Rios, Private First Class Jason M. Meyer, Specialist Roy Buckley, Lance Corporal Matthew R. Smith, Private Jesse Halling, Private Shawn Pahnke, Specialist Chad L. Keith, Private Robert L. McKinley, Sergeant First Class Craig A. Boling, Staff Sergeant David L. Loyd, Specialist Ronald D. Allen, Jr., Staff Sergeant Mark A. Lawton, Specialist Ryan G. Carlock, Staff Sergeant Frederick L. Miller, Specialist Brian Penisten, Corporal Darrell Smith, Sergeant Jarrod W. Black, Chief Warrant Officer Brian D. Hazelgrove, Specialist Luke Frist, Private First Class Christopher E. Hudson, Private First Class John D. "J.D." Amos II, Private First Class Deryk L. Hallal, Lance Corporal Torrey L. Gray, Specialist Michael J. Wiesemann, Staff Sergeant Stephen G. Martin, Sergeant Robert E. Colvill, Sergeant David M. Heath, Private First Class Luis A. Perez, Sergeant James Daniel Faulkner, Private First Class Nathan E. Stahl, Private First Class Stephen P. Downing II, Command Sergeant Major Steven W. Faulkenburg, Specialist Raymond L. White, Sergeant Morgan W. Strader, Lance Corporal Lance Thompson, Lance Corporal James Swain, Corporal Bryan Wilson, Staff Sergeant Marvin Lee Trost, Lance Corporal Eric Hillenburg, Private Cory R. Depew, Sergeant Kyle William Childress, Sergeant Paul M. Heltzel, Sergeant Jeanette Winters, Corporal Matthew Commons, Lance Corporal Kyle Thomas, Specialist Curtis Carter, Specialist William Emanuel, Sergeant Jeremy Wright, Specialist Norman Snyder, Captain Michael Fiscus, Master Sergeant Michael Hiester, Specialist Brett Hershey, Private*

*First Class Jimmy Lee, Private First Class Sascha Struble, and Naval Petty Officer Jason Profit; and*

*Whereas, On behalf of the people of the state of Indiana, the Indiana House of Representatives pays special tribute to these servicemen, who made the ultimate sacrifice, and also pays tribute to the families and loved ones of those who have died: Therefore,*

*Be it resolved by the House of Representatives of the General Assembly of the State of Indiana:*

SECTION 1. That the Indiana House of Representatives offers its gratitude and appreciation to the brave Hoosier men and women, veterans of the Armed Forces, and the families and friends who stand behind them.

SECTION 2. That the Indiana House of Representatives and all Hoosiers offer their deepest sympathy to the families and friends of those who gave their lives in the service of our country.

SECTION 3. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to the President of the United States; the United States Department of Defense; the presiding officers and the majority and minority leaders of both houses of the United States Congress; the Indiana congressional delegation; the Adjutant General of the Indiana National Guard and the Indiana Reserves; the commanding officers of the Grissom Air Reserve Base; and to the families of the soldiers who gave their lives.

The resolution was read a first time; the members stood for the reading of the names of the service members killed in operations in Iraq.

The House recessed for remarks by Adjutant General R. Martin Umbarger.

The resolution was adopted by voice vote.

The members stood for a moment of silence in memory of those killed in the service of our country.

The House recessed until the fall of the gavel.

## RECESS

The House reconvened at 11:10 a.m. with the Deputy Speaker Pro Tempore, Representative T. Brown, in the Chair.

Representative Bottorff, who had been excused, was present.

## REPORTS FROM COMMITTEES

### COMMITTEE REPORT

Mr. Speaker: Pursuant to Joint Rule 20, your Committee on Rules and Legislative Procedures, to which was referred Engrossed House Bill 1776 because it conflicts with SEA 32-2005 without properly recognizing the existence of SEA 32-2005, has had Engrossed House Bill 1776 under consideration and begs leave to report back to the House with the recommendation that Engrossed House Bill 1776 be corrected as follows:

Page 3, line 35, after "IC 35-47-2-3" insert ", AS AMENDED BY SEA 32-2005, SECTION 2,".

Page 4, line 35, delete "his" and insert "the officer's".

Page 5, line 2, after "applicant" insert ":

(1)".

Page 5, line 3, after "handgun" delete "and" and insert ";

(2)".

Page 5, line 4, delete "and" and insert ";

(3) is".

Page 5, line 4, delete "so".

Page 5, line 4, delete "licensed," and insert "licensed; and

(4) is:

(A) a citizen of the United States; or

(B) not a citizen of the United States but is allowed to carry a firearm in the United States under federal law;".

Page 5, line 4, begin a new line blocked left beginning with "the superintendent".

(Reference is to EHB 1776 as printed March 25, 2005.)

WHETSTONE, Chair  
PELATH, R.M.M.  
BUELL, Author

Report adopted.

## RESOLUTIONS ON FIRST READING

### House Concurrent Resolution 79

Representatives Welch and Pierce introduced House Concurrent Resolution 79:

A CONCURRENT RESOLUTION honoring Steve Kinser.

*Whereas, Steve Kinser has had a remarkable racing career;*

*Whereas, Before Steve began racing, he was a championship wrestler;*

*Whereas, The Bloomington native won a state wrestling championship under Kay Hutsell at Bloomington South High School;*

*Whereas, Steve made the Bloomington South Panthers' varsity wrestling team as a junior and went 20-2, finishing second in the state at 132 pounds;*

*Whereas, In Steve's senior year, he was 26-1 and won the state wrestling championship;*

*Whereas, After high school, Steve joined his father in the bricklaying and sprint racing businesses;*

*Whereas, In 1978, the World of Outlaws racing series began and Steve abandoned the bricklaying business to become a full-time racer;*

*Whereas, In his 24 1/2 seasons with the Outlaws, Steve won 19 championships and 513 A features;*

*Whereas, 1987 was an outstanding year for Steve; he won 46 features, including 12 in a row and 24 of the last 26; and*

*Whereas, Steve Kinser's racing was not limited to sprint cars; he competed at the Indianapolis 500, in NASCAR, and in IROC, finishing 14th in the 1997 Indianapolis 500: Therefore,*

*Be it resolved by the House of Representatives of the General Assembly of the State of Indiana, the Senate concurring:*

SECTION 1. That the Indiana General Assembly acknowledges the accomplishments of Steve Kinser and wishes him continued success in all his future endeavors.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to Steve Kinser, his wife Dana, daughter Stevie, and sons Kraig and Kurt.

The resolution was read a first time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution. Senate sponsor: Senator Simpson.

### House Concurrent Resolution 80

Representative Espich introduced House Concurrent Resolution 80:

A CONCURRENT RESOLUTION memorializing Master Sergeant Michael Hiester.

*Whereas, Master Sergeant Michael Hiester died March 26, 2005, when the military vehicle in which he was riding struck and detonated a land mine in Afghanistan;*

*Whereas, Master Sergeant Hiester will posthumously receive the Bronze Star, the Purple Heart, and the Combat Infantryman's Badge;*

*Whereas, Master Sergeant Hiester joined the Indiana National Guard in 1989 and had worked full time for the Guard since 1990;*

*Whereas, Master Sergeant Hiester was an operations officer with the 238th Cavalry Regiment and served with that group in Bosnia-Herzegovina as part of the Indiana National Guard's peacekeeping assignment;*

*Whereas, Master Sergeant Hiester joined the Bluffton Fire Department in 1993;*

*Whereas, Leader of the department's dive team, Master Sergeant Hiester was an instructor who also made himself an expert in ropes and rappelling;*

*Whereas, Master Sergeant Hiester was a member of the American Legion and the Veterans of Foreign Wars in addition to the National Guard Association of Indiana and the International Association of Dive Rescue Specialists;*

*Whereas, In his spare time, Master Sergeant Hiester enjoyed cycling and diving;*

*Whereas, Hoosier men and women fighting the war on terrorism have responded to their country's call without hesitation, and some of these dedicated men and women have been called upon to make the ultimate sacrifice;*

*Whereas, The families of these brave men and women are supported at home through the prayers and love of their families and friends; and*

*Whereas, Master Sergeant Hiester lived his entire life in the town of Bluffton and dedicated a large part of his time to helping the community: Therefore,*

*Be it resolved by the House of Representatives  
of the General Assembly of the State of Indiana,  
the Senate concurring:*

SECTION 1. That the Indiana General Assembly expresses its deep felt sorrow to the members of the family of Master Sergeant Michael Hiester in their time of great sorrow and expresses its appreciation of the sacrifice he made in order to keep our country and the world free.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to Master Sergeant Michael Hiester's wife Dawn, his children Emily and Adam, his parents Tom and Kay Hiester, and his sisters Michele and Megan.

The resolution was read a first time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution. Senate sponsor: Senator Ford.

### House Resolution 82

Representatives Burton and Neese introduced House Resolution 82:

A HOUSE RESOLUTION honoring Commander William D. Bottom.

*Whereas, Commander William D. Bottom served in Vietnam with the 1st Battalion, 83rd Artillery of the United States Army;*

*Whereas, While serving in Vietnam, Commander Bottom was injured and was honorably discharged with the rank of sergeant;*

*Whereas, As Commander of the Disabled American Veterans (DAV) of Indiana, William D. Bottom has traveled more than 20,000 miles in the past eight months, crisscrossing the state and seeing and listening to the plight of disabled veterans;*

*Whereas, Commander Bottom has authorized funds for eight new DAV hospital vans to transport Indiana veterans to the Veterans Administration Hospitals; these vans are to be used in Indianapolis, Columbus, Portland, Marion, Portage, English, Jasper, and Evansville;*

*Whereas, Commander Bottom spearheaded Thanksgiving and Christmas DAV/VA meals for the homeless, where more than 2,500 veterans had dinner;*

*Whereas, Under Commander Bottom, the DAV became a major sponsor of the annual Indiana Women's Veterans Symposium, initiated free dental care for the homeless and indigent veterans, and initiated Indiana's participation in the winter sports clinic in Colorado; and*

*Whereas, Commander Bottom has dedicated a large part of his life to helping veterans improve their lives: Therefore,*

*Be it resolved by the House of Representatives  
of the General Assembly of the State of Indiana:*

SECTION 1. That the Indiana House of Representatives thanks Commander William D. Bottom for his dedicated service to the veterans of Indiana.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to Commander William D. Bottom.

The resolution was read a first time and adopted by voice vote.

### House Resolution 83

Representative Burton introduced House Resolution 83:

A HOUSE RESOLUTION to honor Klay South for his brave service in the United States Marine Corps.

*Whereas, Klay South was born in Franklin, Indiana;*

*Whereas, Klay South worked in the family construction business until he volunteered to serve his country by joining the United States Marine Corps in December of 2002;*

*Whereas, Klay South has been awarded two purple hearts as well as other awards for his military service;*

*Whereas, During his second tour of Iraq, Klay South was wounded with shrapnel to his back during a fire fight with insurgents;*

*Whereas, Klay South was critically wounded on Veterans Day, November 11, 2004 when the unit to which he was assigned was undertaking the initial push into Fallujah going door to door with Klay as "point man" putting him first in the door;*

*Whereas, Klay South's duty as "point man" led to his being first through a door with an ambush waiting behind it;*

*Whereas, Klay South's injuries received from an AK 47 were initially determined to be life-ending; and*

*Whereas, Klay South did not die from his injuries and instead continues to serve his country and community through his encouraging and motivating speeches directed toward the nation's youth: Therefore,*

*Be it resolved by the House of Representatives  
of the General Assembly of the State of Indiana:*

SECTION 1. That the Indiana House of Representatives do honor Klay South for his brave service in the United States Marine Corps.

SECTION 2. That the Principal Clerk of the House of Representatives shall transmit a copy of this resolution to Klay South.

The resolution was read a first time and adopted by voice vote.

The House recessed until the fall of the gavel.

### RECESS

The House reconvened at 4:20 p.m. with the Speaker in the Chair.

Representatives Bauer and Ripley were excused.

### MESSAGE FROM THE SENATE

Mr. Speaker: I hereby transmit Senate Enrolled Acts 18, 253, 340, and 474 for signature of the Speaker of the House.

MARY C. MENDEL  
Principal Secretary of the Senate

### MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has concurred in the House amendments to Engrossed Senate Bill 54.

MARY C. MENDEL  
Principal Secretary of the Senate

### MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has adopted the Conference Committee Report 1 on Engrossed Senate Bills 67, 89, 196, 201, 224, 233, 295, 378, 379,

433, 481, 509, and 564.

MARY C. MENDEL  
Principal Secretary of the Senate

#### MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has accepted and approved the Joint Rule 20 correction on Engrossed House Bill 1403.

MARY C. MENDEL  
Principal Secretary of the Senate

#### MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has accepted and approved the Joint Rule 20 correction on Engrossed House Bill 1776.

MARY C. MENDEL  
Principal Secretary of the Senate

#### MESSAGE FROM THE SENATE

Mr. Speaker: I am directed by the Senate to inform the House that the Senate has passed House Concurrent Resolutions 77, 78, and 80 and the same are herewith returned to the House.

MARY C. MENDEL  
Principal Secretary of the Senate

### CONFERENCE COMMITTEE REPORTS

#### CONFERENCE COMMITTEE REPORT

ESB 49-1; filed April 26, 2005, at 11:37 a.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 49 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 24-4.8 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

#### ARTICLE 4.8. PROHIBITED SPYWARE

##### Chapter 1. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Advertisement" means a communication that has the primary purpose of promoting a commercial product or service.

Sec. 3. (a) "Computer software" means a sequence of instructions written in any programming language that is executed on a computer.

(b) The term does not include computer software that is a web page or a data component of a web page that is not executable independently of the web page.

Sec. 4. "Damage" means a significant impairment to the integrity or availability of data, computer software, a system, or information.

Sec. 5. "Execute" means to perform a function or carry out an instruction of computer software.

Sec. 6. "Intentionally deceptive means" means any of the following:

(1) A materially false statement that a person knows to be false.

(2) A statement or description made by a person who omits or misrepresents material information with the intent to deceive an owner or operator of a computer.

(3) The failure to provide notice to an owner or operator of a computer regarding the installation or execution of computer software with the intent to deceive the owner or operator.

Sec. 7. "Internet" has the meaning set forth in IC 5-22-2-13.5.

Sec. 8. (a) "Owner or operator" means the person who owns or leases a computer or a person who uses a computer with the

authorization of the person who owns or leases the computer.

(b) The term does not include a manufacturer, distributor, wholesaler, retail merchant, or any other person who owns or leases a computer before the first retail sale of the computer.

Sec. 9. "Person" means an individual, a partnership, a corporation, a limited liability company, or another organization.

Sec. 10. "Personally identifying information" means the following information that refers to a person who is an owner or operator of a computer:

(1) Identifying information (as defined in IC 35-43-5-1).

(2) An electronic mail address.

(3) Any of the following information in a form that personally identifies an owner or operator of a computer:

(A) An account balance.

(B) An overdraft history.

(C) A payment history.

Sec. 11. (a) Except as provided in subsection (b), "transmit" means to transfer, send, or otherwise make available computer software or a computer software component through a network, the Internet, a wireless transmission, or any other medium, including a disk or data storage device.

(b) "Transmit" does not include an action by a person who provides:

(1) the Internet connection, telephone connection, or other means of connection for an owner or operator, including a compact disc or DVD on which computer software to establish or maintain a connection is made available;

(2) the storage or hosting of computer software or an Internet web page through which the computer software was made available; or

(3) an information location tool, including a directory, an index, a reference, a pointer, or a hypertext link, through which the owner or operator of the computer located the software;

unless the person receives a direct economic benefit from the execution of the computer software.

#### Chapter 2. Prohibited Conduct

Sec. 1. This chapter does not apply to a person who monitors or interacts with an owner or operator's Internet connection, Internet service, network connection, or computer if the person is a telecommunications carrier, cable operator, computer hardware or software provider, or other computer service provider who monitors or interacts with an owner or operator's Internet connection, Internet service, network connection, or computer for one (1) or more of the following purposes:

(1) Network security.

(2) Computer security.

(3) Diagnosis.

(4) Technical support.

(5) Maintenance.

(6) Repair.

(7) Authorized updates of software or system firmware.

(8) Authorized remote system management.

(9) Detection or prevention of the unauthorized, illegal, or fraudulent use of a network, service, or computer software, including scanning for and removing computer software that facilitates a violation of this chapter.

Sec. 2. A person who is not the owner or operator of the computer may not knowingly or intentionally:

(1) transmit computer software to the computer; and

(2) by means of the computer software transmitted under subdivision (1), do any of the following:

(A) Use intentionally deceptive means to modify computer settings that control:

(i) the page that appears when an owner or operator opens an Internet browser or similar computer software used to access and navigate the Internet;

(ii) the Internet service provider, search engine, or web proxy that an owner or operator uses to access or search the Internet; or

(iii) the owner or operator's list of bookmarks used to access web pages.

(B) Use intentionally deceptive means to collect personally identifying information:

(i) through the use of computer software that records a keystroke made by an owner or operator and transfers that information from the computer to another person; or

(ii) in a manner that correlates the personally identifying information with data respecting all or substantially all of the web sites visited by the owner or operator of the computer, not including a web site operated by the person collecting the personally identifying information.

(C) Extract from the hard drive of an owner or operator's computer:

(i) a credit card number, debit card number, bank account number, or any password or access code associated with these numbers;

(ii) a Social Security number, tax identification number, driver's license number, passport number, or any other government issued identification number; or

(iii) the account balance or overdraft history of a person in a form that identifies the person.

(D) Use intentionally deceptive means to prevent reasonable efforts by an owner or operator to block or disable the installation or execution of computer software.

(E) Knowingly or intentionally misrepresent that computer software will be uninstalled or disabled by an owner or operator's action.

(F) Use intentionally deceptive means to remove, disable, or otherwise make inoperative security, antispyware, or antivirus computer software installed on the computer.

(G) Take control of another person's computer with the intent to cause damage to the computer or cause the owner or operator to incur a financial charge for a service that the owner or operator has not authorized by:

(i) accessing or using the computer's modem or Internet service; or

(ii) without the authorization of the owner or operator, opening multiple, sequential, standalone advertisements in the owner or operator's Internet browser that a reasonable computer user cannot close without turning off the computer or closing the browser.

(H) Modify:

(i) computer settings that protect information about a person with the intent of obtaining personally identifying information without the permission of the owner or operator; or

(ii) security settings with the intent to cause damage to a computer.

(I) Prevent reasonable efforts by an owner or operator to block or disable the installation or execution of computer software by:

(i) presenting an owner or operator with an option to decline installation of computer software knowing that the computer software will be installed even if the owner or operator attempts to decline installation; or

(ii) falsely representing that computer software has been disabled.

Sec. 3. A person who is not the owner or operator may not knowingly or intentionally do any of the following:

(1) Induce the owner or operator to install computer software on the owner or operator's computer by knowingly or intentionally misrepresenting the extent to which installing the computer software is necessary for:

(A) computer security;

(B) computer privacy; or

(C) opening, viewing, or playing a particular type of content.

(2) Use intentionally deceptive means to execute or cause the execution of computer software with the intent to cause the owner or operator to use the computer software in a manner that violates subdivision (1).

### Chapter 3. Relief and Damages

Sec. 1. In addition to any other remedy provided by law, a

provider of computer software, the owner of a web site, or the owner of a trademark who is adversely affected by reason of the violation may bring a civil action against a person who violates IC 24-4.8-2:

(1) to enjoin further violations of IC 24-4.8-2; and

(2) to recover the greater of:

(A) actual damages; or

(B) one hundred thousand dollars (\$100,000);

for each violation of IC 24-4.8-2.

Sec. 2. For purposes of section 1 of this chapter, conduct that violates more than one (1) subdivision, clause, or item of IC 24-4.8-2 constitutes a separate violation for each separate subdivision, clause, or item violated. However, a single action or course of conduct that causes repeated violations of a single subdivision, clause, or item of IC 24-4.8-2 constitutes one (1) violation.

SECTION 2. IC 35-32-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Criminal actions shall be tried in the county where the offense was committed, except as otherwise provided by law.

(b) If a person committing an offense upon the person of another is located in one (1) county and his the person's victim is located in another county at the time of the commission of the offense, the trial may be in either of the counties.

(c) If the offense involves killing or causing the death of another human being, the trial may be in the county in which the:

(1) cause of death is inflicted;

(2) death occurs; or

(3) victim's body is found.

(d) If an offense is committed in Indiana and it cannot readily be determined in which county the offense was committed, trial may be in any county in which an act was committed in furtherance of the offense.

(e) If an offense is commenced outside Indiana and completed within Indiana, the offender may be tried in any county where any act in furtherance of the offense occurred.

(f) If an offense commenced inside Indiana is completed outside Indiana, the offender shall be tried in any county where an act in furtherance of the offense occurred.

(g) If an offense is committed on the portions of the Ohio or Wabash Rivers where they form a part of the boundaries of this state, trial may be had in the county that is adjacent to the river and whose boundaries, if projected across the river, would include the place where the offense was committed.

(h) If an offense is committed at a place which is on or near a common boundary which is shared by two (2) or more counties and it cannot be readily determined where the offense was committed, then the trial may be had in any county sharing the common boundary.

(i) If an offense is committed on a public highway (as defined in IC 9-25-2-4) that runs on and along a common boundary shared by two (2) or more counties, the trial may be held in any county sharing the common boundary.

(j) If an offense is committed by use of the Internet or another computer network (as defined in IC 35-43-2-3), the trial may be held in any county:

(1) from which or to which access to the Internet or other computer network was made; or

(2) in which any computer, computer data, computer software, or computer network that was used to access the Internet or other computer network is located.

(k) If an offense:

(1) is committed by use of:

(A) the Internet or another computer network (as defined in IC 35-43-2-3); or

(B) another form of electronic communication; and

(2) occurs outside Indiana and the victim of the offense resides in Indiana at the time of the offense;

the trial may be held in the county where the victim resides at the time of the offense.

SECTION 3. IC 35-41-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) As used in this section, "Indiana" includes:

(1) the area within the boundaries of the state of Indiana, as set forth in Article 14, Section 1 of the Constitution of the State of Indiana;

(2) the portion of the Ohio River on which Indiana possesses concurrent jurisdiction with the state of Kentucky under Article 14, Section 2 of the Constitution of the State of Indiana; and

(3) the portion of the Wabash River on which Indiana possesses concurrent jurisdiction with the state of Illinois under Article 14, Section 2 of the Constitution of the State of Indiana.

(b) A person may be convicted under Indiana law of an offense if:

(1) either the conduct that is an element of the offense, the result that is an element, or both, occur in Indiana;

(2) conduct occurring outside Indiana is sufficient under Indiana law to constitute an attempt to commit an offense in Indiana;

(3) conduct occurring outside Indiana is sufficient under Indiana law to constitute a conspiracy to commit an offense in Indiana, and an overt act in furtherance of the conspiracy occurs in Indiana;

(4) conduct occurring in Indiana establishes complicity in the commission of, or an attempt or conspiracy to commit, an offense in another jurisdiction that also is an offense under Indiana law; or

(5) the offense consists of the omission to perform a duty imposed by Indiana law with respect to domicile, residence, or a relationship to a person, thing, or transaction in Indiana;

**(6) conduct that is an element of the offense or the result of conduct that is an element of the offense, or both, involve the use of the Internet or another computer network (as defined in IC 35-43-2-3) and access to the Internet or other computer network occurs in Indiana; or**

**(7) conduct:**

**(A) involves the use of:**

**(i) the Internet or another computer network (as defined in IC 35-43-2-3); or**

**(ii) another form of electronic communication;**

**(B) occurs outside Indiana and the victim of the offense resides in Indiana at the time of the offense; and**

**(C) is sufficient under Indiana law to constitute an offense in Indiana.**

(c) When the offense is homicide, either the death of the victim or bodily impact causing death constitutes a result under subsection (b)(1). If the body of a homicide victim is found in Indiana, it is presumed that the result occurred in Indiana.

(Reference is to ESB 49 as printed March 25, 2005.)

FORD	KOCH
BRODEN	MOSES
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

#### CONFERENCE COMMITTEE REPORT ESB 279-1; filed April 26, 2005, at 12:39 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 279 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 13-11-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) "Applicant", for purposes of IC 13-19-4, means an individual, a corporation, a limited liability company, a partnership, or a business association that:

(1) receives, for commercial purposes, solid or hazardous waste generated offsite for storage, treatment, processing, or disposal; and

(2) applies for the issuance, ~~renewal~~, transfer, or major modification of a permit described in IC 13-15-1-3 other than a post-closure permit or an emergency permit.

**For purposes of this subsection, an application for the issuance of**

**a permit does not include an application for renewal of a permit.**

(b) "Applicant", for purposes of IC 13-20-2, means an individual, a corporation, a limited liability company, a partnership, or a business association that applies for an original permit for the construction or operation of a landfill.

(c) For purposes of subsection (a), "applicant" does not include an individual, a corporation, a limited liability company, a partnership, or a business association that:

(1) generates solid or hazardous waste; and

(2) stores, treats, processes, or disposes of the solid or hazardous waste at a site that is:

(A) owned by the individual, corporation, partnership, or business association; and

(B) limited to the storage, treatment, processing, or disposal of solid or hazardous waste generated by that individual, corporation, limited liability company, partnership, or business association.

SECTION 2. IC 13-11-2-206 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 206. "Solid waste disposal facility", for purposes of IC 13-19-3-8.2, **IC 13-19-4**, IC 13-20-4, and IC 13-20-6, means a facility at which solid waste is:

(1) deposited on or beneath the surface of the ground as an intended place of final location; or

(2) incinerated.

SECTION 3. IC 13-11-2-212 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 212. (a) "Solid waste processing facility", for purposes of IC 13-19-3-8.2, **IC 13-19-4**, **IC 13-20-1**, IC 13-20-4, and IC 13-20-6, means a facility at which at least one (1) of the following is located:

(1) A solid waste incinerator.

(2) A transfer station.

(3) A solid waste baler.

(4) A solid waste shredder.

(5) A resource recovery system.

(6) A composting facility.

(7) A garbage grinding system.

**(8) A medical or an infectious waste treatment facility.**

**(9) A solid waste solidification facility that is not located on an operating, permitted landfill.**

**(10) A facility that uses plasma arc or another source of heat to treat solid waste.**

(b) The term does not include a facility or operation that generates solid waste.

SECTION 4. IC 13-19-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. **(a) Except as provided in section 8(e) of this chapter, this chapter does not apply to:**

**(1) an applicant for a transfer ~~stations~~ station permit that holds a permit for and continuously operates; or**

**(2) the transfer of a permit for a transfer station to an applicant that holds a permit for and is operating;**

**a transfer station, solid waste disposal facility, or hazardous waste facility in Indiana after December 31, 2004.**

**(b) Except as provided in section 8(e) of this chapter, this chapter does not apply to the transfer of a permit for a solid waste disposal facility to an applicant that holds a permit for and is operating a solid waste disposal facility or hazardous waste facility in Indiana after December 31, 2004.**

SECTION 5. IC 13-19-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. Before an application for the issuance, ~~renewal~~, transfer, or major modification of a permit described in ~~IC 13-15-1-3~~ **for a solid waste processing facility, solid waste disposal facility, or hazardous waste facility** may be granted, the applicant and each person who is a responsible party with respect to the applicant must submit to the department:

(1) a disclosure statement that:

(A) meets the requirements set forth in section 3(a) of this chapter; and

(B) is executed under section 3(b) of this chapter; or

(2) all of the following information:

(A) The information concerning legal proceedings that:

(i) is required under Section 13 or 15(d) of the federal Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

and

(ii) the applicant or responsible party has reported under form 10-K.

(B) A description of all judgments that:

(i) have been entered against the applicant or responsible party in a proceeding described in section 3(a)(3) of this chapter; and

(ii) have imposed upon the applicant or responsible party a fine or penalty described in section 3(a)(3)(A) of this chapter.

(C) A description of all judgments of conviction entered against the applicant or responsible party within five (5) years before the date of submission of the application for the violation of any state or federal environmental protection law.

SECTION 6. IC 13-19-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Subject to subsection (b), the commissioner may deny an application for the issuance, ~~renewal~~, transfer, or major modification of a permit ~~described in IC 13-15-1-3~~ **for a solid waste processing facility, solid waste disposal facility, or hazardous waste facility** if the commissioner finds that:

(1) the applicant or a responsible party has intentionally misrepresented or concealed any material fact in a statement required by section 2 or 3 of this chapter;

(2) a civil or administrative complaint described in section 3(a)(3) of this chapter has been filed against the applicant or a responsible party within five (5) years before the date of submission of the application;

(3) a criminal complaint described in section 3(a)(4) of this chapter has been filed against the applicant or a responsible party within five (5) years before the date of submission of the application;

(4) a judgment of criminal conviction described in section 3(a)(5) or 3(a)(6) of this chapter has been entered against the applicant or a responsible party within five (5) years before the date of submission of the application; or

(5) the applicant or a responsible party has knowingly and repeatedly violated any state or federal environmental protection laws.

(b) The commissioner may not deny a permit under this section based solely upon pending complaints disclosed under section 3(a)(3)(B) or 3(a)(4) of this chapter.

SECTION 7. IC 13-19-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. Before making a determination to deny an application for the issuance, ~~renewal~~, transfer, or major modification of a permit under section 5 of this chapter, the commissioner shall consider the following mitigating factors:

(1) The nature and details of the acts attributed to the applicant or responsible party.

(2) With respect to:

(A) a civil or an administrative complaint referred to in section 5(a)(2) of this chapter or IC 13-7-10.2-4(a)(2) (before its repeal); or

(B) a criminal complaint referred to in section 5(a)(3) of this chapter or IC 13-7-10.2-4(a)(3) (before its repeal);

whether the matter has been resolved.

(3) With respect to:

(A) a civil or an administrative complaint referred to in section 5(a)(2) of this chapter or IC 13-7-10.2-4(a)(2) (before its repeal);

(B) a criminal complaint referred to in section 5(a)(3) of this chapter or IC 13-7-10.2-4(a)(3) (before its repeal); or

(C) a judgment of conviction referred to in section 5(a)(4) of this chapter or IC 13-7-10.2-4(a)(4);

whether any appeal is pending.

(4) The degree of culpability of the applicant or responsible party.

(5) The applicant's or responsible party's cooperation with the state or federal agencies involved in the investigation of the activities involved in complaints and convictions referred to in section 5(a)(2) through 5(a)(5) of this chapter or

IC 13-7-10.2-4(a)(2) through IC 13-7-10.2-4(a)(5) (before their repeal).

(6) The applicant's or responsible party's dissociation from any other persons or entities convicted of acts referred to in section 5(a)(2) through 5(a)(5) of this chapter or IC 13-7-10.2-4(a)(2) through IC 13-7-10.2-4(a)(5) (before their repeal).

(7) Prior or subsequent self-policing or internal education programs established by the applicant to prevent activities referred to in section 5(a) of this chapter or IC 13-7-10.2-4(a) (before its repeal).

(8) Whether the best interests of the public will be served by denial of the permit.

(9) Any demonstration of good citizenship by the applicant or responsible party.

SECTION 8. IC 13-19-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) In taking action under this chapter on an application for the issuance, ~~renewal~~, transfer, or major modification of a permit ~~described in IC 13-15-1-3~~, **for a solid waste processing facility, solid waste disposal facility, or hazardous waste facility**, the commissioner shall make separately stated findings of fact to support the action taken.

(b) The findings of ultimate fact must be accompanied by a concise statement of the underlying basic facts of record to support the findings. However, when the commissioner denies an application, the commissioner is not required to explain the extent to which any of the mitigating factors set forth in section 6 of this chapter influenced the commissioner's determination to deny the application.

SECTION 9. IC 13-19-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) This section does not apply to the transfer of ownership of a facility from a permittee whose business derives less than fifty percent (50%) of its gross revenue from the management of solid waste to a prospective owner whose business derives less than fifty percent (50%) of its gross revenue from the management of solid waste.

(b) If there is a prospective change of **the entire** ownership **interest** in a facility for which a permit described in IC 13-15-1-3 is required, the prospective owner, at least one hundred eighty (180) days before the proposed change in ownership, **may** ~~shall~~ submit to the commissioner a disclosure statement that:

(1) includes the information required by section 3(a) of this chapter; and

(2) was executed under section 3(b) of this chapter.

(c) The commissioner:

(1) shall review the disclosure statement **submitted under subsection (b);** and

(2) may investigate and verify the information set forth in the disclosure statement.

(d) If the commissioner determines that:

(1) the information disclosed by the disclosure statement **submitted under subsection (b);** and

(2) any investigation by the commissioner;

would require the commissioner to deny the prospective owner's permit application if the prospective owner were applying for a permit under section 2 of this chapter, the commissioner shall disapprove the transfer of ownership of the facility to the prospective owner.

(e) **If:**

(1) **subsection (b) does not apply; and**

(2) **there is a change of at least fifty percent (50%) ownership control of an entity that holds a permit described in IC 13-15-1-3, including an entity referred to in section 1 of this chapter (other than an entity referred to in subsection (a));**

**the entity must, not later than thirty (30) days after the change of ownership control is completed, submit to the department the disclosure statement referred to in subsection (b).**

(f) **The commissioner:**

(1) shall review the disclosure statement submitted under subsection (e); and

(2) may investigate and verify the information set forth in the disclosure statement.

(g) **If the commissioner determines:**

(1) **that:**

(A) **the information disclosed by the disclosure statement**

submitted under subsection (e); and

(B) any investigation by the commissioner; would require the commissioner to deny an application for a permit described in IC 13-15-1-3 if the entity that submits the disclosure statement were applying for a permit under section 2 of this chapter; or

(2) that an entity failed to submit to the department a timely disclosure statement under subsection (e);

the commissioner shall revoke any permit described in IC 13-15-1-3 held by the entity.

SECTION 10. IC 13-20-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. This chapter does not apply to an individual, a corporation, a partnership, a **limited liability company**, or a business association that in its regular business activity:

(1) produces solid waste as a byproduct of or incidental to its regular business activity; and

(2) disposes of the solid waste at a site that is:

(A) owned by the individual, corporation, partnership, **limited liability company**, or business association; and

(B) limited to use by that individual, corporation, partnership, **limited liability company**, or business association for the disposal of solid waste produced by:

(i) that individual, corporation, partnership, **limited liability company**, or business association; or

(ii) a subsidiary of an entity referred to in item (i).

SECTION 11. IC 13-20-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. A person that applies for a permit ~~described in IC 13-15-1-3 that concerns a solid waste management facility for a solid waste disposal facility or a solid waste processing facility, except for a transfer station,~~ must demonstrate that there is a local or regional need in Indiana for the facility.

SECTION 12. IC 13-20-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. A person that applies for a permit referred to in section 2 of this chapter must submit the following information to the department along with the permit application:

(1) A description of the area that would be served by the solid waste ~~management disposal or processing~~ facility.

(2) A description of existing solid waste management facilities in the area that would be served by the solid waste ~~management disposal~~ facility.

(3) A description of the need that would be fulfilled by constructing the solid waste ~~management disposal~~ facility.

SECTION 13. IC 13-20-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. If the department determines that there is not a local or regional need in Indiana for the solid waste ~~management disposal~~ facility, the person referred to in section 2 of this chapter may not receive a permit described under IC 13-15-1-3 of this chapter. If a permit is denied under this ~~subsection; section,~~ the department must provide the person referred to in section 2 of this chapter with a statement describing the reasons the department denied the permit.

SECTION 14. IC 13-20-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) This section applies to the transportation of municipal waste from solid waste processing facilities.

(b) A shipment of municipal waste in a municipal waste collection and transportation vehicle must be accompanied by a municipal waste transportation manifest.

(c) A manifest required under subsection (b) must include the following information:

(1) The amount in tons of municipal waste transported in the vehicle.

(2) The name and address of the solid waste processing facility from which the municipal waste is transported.

(3) The destination of the municipal waste.

(4) The name of the person transporting the municipal waste.

~~(5) If the municipal waste is transported from a transfer station that receives municipal waste, the identity of and acknowledgement number issued by the department under IC 13-20-6-5 or IC 13-7-10.5-14 (before its repeal) to the~~

following:

~~(A) The transporter of the municipal waste;~~

~~(B) The transfer station from which the municipal waste is transported;~~

~~(C) A broker involved in the transportation of the municipal waste;~~

(d) The owner or operator of the solid waste processing facility from which municipal waste is to be transported shall:

(1) prepare the manifest required by subsection (b); and

(2) deliver the manifest to the operator of the vehicle.

(e) The operator of the vehicle shall:

(1) carry the manifest while transporting the municipal waste; and

(2) present the manifest to the owner or operator of the facility to which the municipal waste is transported.

(f) The owner or operator of the facility to which the municipal waste is transported shall:

(1) retain each manifest for one (1) year; and

(2) send one (1) copy of each manifest to the department not later than three (3) months after receiving a manifest for at least one (1) year.

SECTION 15. IC 13-20-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The commissioner may, by order, do the following:

(1) Suspend the waste transfer activities of an operator who is not a resident of Indiana if the operator is not properly licensed, certified, or permitted to conduct waste transfer activities in another state in which the operator does business.

(2) Suspend the waste transfer activities of a transfer station that does not meet the requirements of the inspection program established under section 7 of this chapter.

(b) An order issued by the commissioner under this section requiring an operator or transfer station to suspend operations must contain the date by which waste transfer activities must be suspended.

(c) After issuing an order requiring an operator or transfer station to suspend waste transfer activities but before the date by which the activities must be suspended, the department must provide notice by certified mail, return receipt requested, to the following:

(1) Each regulated solid waste processing facility in Indiana.

(2) Each regulated solid waste disposal facility in Indiana.

~~(3) Each broker and transporter that has submitted a disclosure statement under section 2 of this chapter;~~

(d) The notice described under subsection (c) must contain the following:

(1) The name of the operator or transfer station subject to the order.

(2) The date on which waste transfer activities are suspended under the order.

~~(3) The acknowledgement number issued to the operator under section 5 of this chapter;~~

~~(4) (3) If the order applies to a transfer station, the location of the transfer station.~~

(e) Upon a determination by the commissioner that an operator previously ordered to suspend waste transfer activities may engage again in waste transfer activities, the department shall immediately provide notice by certified mail, return receipt requested, to each:

(1) regulated solid waste processing facility in Indiana; and

(2) regulated solid waste disposal facility in Indiana; and

~~(3) broker and transporter that submitted a disclosure statement under section 2 of this chapter;~~

that the operator or transfer station will be allowed to resume waste transfer activities. The notice required under this subsection must contain the date on which the operator or transfer station will be allowed to resume waste transfer activities

SECTION 16. IC 13-20-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) An operator who is not a resident of Indiana or a transfer station may not engage in waste transfer activities while the operator or transfer station is suspended from engaging in waste transfer activities under section 3 or 4 of this chapter.

(b) On or after the effective date established under a rule adopted by the board, a solid waste disposal facility or a solid waste processing facility located inside Indiana may not knowingly accept



municipal waste from a transfer station located inside of or outside of Indiana that receives municipal waste if:

- (1) the municipal waste is not accompanied by a manifest that contains the information required under IC 13-20-4-7; or
- (2) the person who manages the solid waste disposal facility or solid waste processing facility has received notice under section 4(c) of this chapter that:

- (A) the transfer station that shipped the municipal waste; or
- (B) an operator listed on the manifest;

has been suspended from engaging in waste transfer activities under this chapter.

SECTION 17. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 13-11-2-210; IC 13-20-6-2; IC 13-20-6-3; IC 13-20-6-5; IC 13-20-6-6.

SECTION 18. [EFFECTIVE JULY 1, 2005] **(a) For purposes of this SECTION, "transfer station" has the meaning set forth in IC 13-11-2-235(a).**

**(b) 329 IAC 11-9-5 is void to the extent that the rule applies to transfer stations.**

**(c) The solid waste management board shall amend 329 IAC 11-9-5 so that the rule is consistent with subsection (b).**

(Reference is to ESB 279 as printed March 30, 2005.)

GARD	WOLKINS
HUME	MICON
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

#### CONFERENCE COMMITTEE REPORT ESB 79-1; filed April 26, 2005, at 12:42 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 79 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 9-18-2-7, AS AMENDED BY HEA 1288-2005, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A person who owns a vehicle subject to registration shall register each vehicle owned by the person as follows:

(1) A vehicle subject to section 8 of this chapter shall be registered under section 8.

(2) **Subject to subsection (g)**, a vehicle not subject to section 8 of this chapter or to the International Registration Plan shall be registered before:

- (A) March 1 of each year; or
- (B) an earlier date subsequent to January 1 of each year as set by the bureau.

(3) School buses owned by a school corporation are exempt from annual registration but are subject to registration under IC 20-27-7.

(4) Subject to subsection (f), a vehicle subject to the International Registration Plan shall be registered before April 1 of each year.

(b) Registrations and re-registrations under this section are for the calendar year. Registration and re-registration for school buses owned by a school corporation may be for more than a calendar year.

(c) License plates for a vehicle subject to this section may be displayed during:

- (1) the calendar year for which the vehicle is registered; and
- (2) the period of time:

- (A) subsequent to the calendar year; and
- (B) before the date that the vehicle must be re-registered.

(d) A person who owns or operates a vehicle may not operate or permit the operation of a vehicle that:

- (1) is required to be registered under this chapter; and
- (2) has expired license plates.

(e) If a vehicle that is required to be registered under this chapter has:

- (1) been operated on the highways; and

(2) not been properly registered under this chapter; the bureau shall, before the vehicle is re-registered, collect the registration fee that the owner of the vehicle would have paid if the vehicle had been properly registered.

(f) The department of state revenue may adopt rules under IC 4-22-2 to issue staggered registration to motor vehicles subject to the International Registration Plan.

**(g) The bureau may adopt rules under IC 4-22-2 to issue staggered registration to motor vehicles described in subsection (a)(2).**

(Reference is to ESB 79 as reprinted March 25, 2005.)

WYSS	DUNCAN
SIMPSON	GOODIN
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

#### CONFERENCE COMMITTEE REPORT ESB 202-1; filed April 26, 2005, at 12:43 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 202 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 20-12-5.5-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2.5. Except as provided in subsection (b), a project that has been approved or authorized by the general assembly is not subject to review by the commission for higher education.**

**(b) The commission for higher education shall review a project approved or authorized by the general assembly if the review is requested by the budget agency or the budget committee.**

SECTION 2. [EFFECTIVE UPON PASSAGE] **The trustees of Indiana University may issue and sell bonds under IC 20-12-8, subject to the approvals required by IC 20-12-5.5, to provide funds for the acquisition, renovation, expansion, and improvement of the hotel facility (including all functionally related and subordinate components of the hotel facility) adjacent to the Indiana University Conference Center on the Indianapolis campus and may undertake the project if the total costs financed by the bond issue, excluding amounts necessary to provide money for debt service reserves, credit enhancement, or other costs incidental to the issuance of the bonds, do not exceed thirty-one million two hundred thousand dollars (\$31,200,000).**

**(b) Notwithstanding IC 20-12-8-1, the trustees of Indiana University may use a part of the proceeds of the bond issue authorized by subsection (a) for an integrated transit study. The purpose of the study must be to ascertain and recommend options for increasing accessibility to the Indianapolis campus and surrounding areas. The costs of the study authorized by this subsection may not exceed two hundred thousand dollars (\$200,000).**

SECTION 3. **An emergency is declared for this act.**

(Reference is to ESB 202 as reprinted April 1, 2005.)

WYSS	BUELL
SIMPSON	WELCH
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

#### CONFERENCE COMMITTEE REPORT ESB 446-1; filed April 26, 2005, at 1:18 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 446 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT concerning local government.

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 8-1.5-5-29 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29. (a) Subsections (c), (d), and (e) do not apply to a city that before January 1, 2005, adopted an ordinance establishing procedures for the collection of unpaid user fees under this chapter through the enforcement of a lien.

(b) Fees assessed against real property under this chapter constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (c) and (d), the lien attaches when notice of the lien is filed in the county recorder's office under section 30 of this chapter.

(c) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If property is conveyed before a lien is filed, the department shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not more than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(d) A lien attaches against real property occupied by someone other than the owner only if the department notifies the owner within twenty (20) days after the time the user fees became sixty (60) days delinquent. However, the department must give notice to the owner only if the owner has given the department written notice of the address to which to send notice.

(e) The department shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

SECTION 2. IC 8-1.5-5-30 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 30. (a) The board may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days.

(b) Except as provided in subsection (k), the board shall enforce payment of fees imposed under this chapter. As often as the board determines necessary in a calendar year, the board shall prepare either of the following:

(1) A list of the delinquent fees and penalties that are enforceable under this section. The list must include the following:

(A) The name of the owner of each lot or parcel of real property on which fees are delinquent.

(B) A description of the premises, as shown by the records of the county auditor.

(C) The amount of the delinquent fees, together with the penalty.

(2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

(c) An officer of the board shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall mail by certified mail, or by another delivery service providing proof of delivery, to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. A service charge of five dollars (\$5), which is in addition to the recording fee charged under this subsection and under subsection (e), shall be added to each delinquent fee that is recorded.

(d) Using the lists and instruments prepared under subsection

(b) and recorded under subsection (c), the board shall, not later than ten (10) days after the list or each individual instrument is recorded under subsection (c), certify to the county auditor a list of the liens that remain unpaid for collection in the next May. The county and its officers and employees are not liable for any material error in the information on this list.

(e) The board shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

(f) Upon receipt of the list under subsection (c), the county auditor of each county shall add a fifteen dollar (\$15) certification fee for each lot or parcel of real property on which fees are delinquent. The fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the district the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next May installment of property taxes. The county treasurer shall include any unpaid charges for the delinquent fee, penalty, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.

(g) After certification of liens under subsection (d), the board may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor.

(h) If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

(i) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the district. The county treasurer shall retain the service charges and certification fees that have been collected and shall deposit them in the county general fund.

(j) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section 29(e) of this chapter, files a verified demand with the county auditor.

(k) A board may write off a fee or penalty under subsection (a) that is less than forty dollars (\$40).

SECTION 3. IC 8-1.5-5-31 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31. (a) A district may foreclose a lien established by this chapter in order to collect fees and penalties. The district shall recover the amount of the fees and penalties, and a reasonable attorney's fee. The court shall order the sale to be made without relief from valuation or appraisal laws.

(b) Except as otherwise provided by this chapter, actions under this chapter are subject to the general statutes regarding municipal public improvement assessments.

SECTION 4. IC 13-26-14-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. Rates, fees, or charges made, assessed, or established by the district are a lien on a lot, parcel of land, or building that is connected with or uses the works of the district in the manner established under IC 36-9-23. The liens:

(1) attach;

(2) are recorded;

(3) are subject to the same penalties, interest, and reasonable attorney's fees on recovery; and

(4) shall be collected and enforced;

in substantially the same manner as provided in IC 36-9-23-31 through IC 36-9-23-32.

SECTION 5. IC 36-1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) If a condition violating an ordinance of a municipal corporation exists on real property, officers of the municipal corporation may enter onto that

property and take appropriate action to bring the property into compliance with the ordinance. However, before action to bring compliance may be taken, all persons holding a substantial interest in the property must be given a reasonable opportunity of at least ten (10) days but not more than sixty (60) days to bring the property into compliance. If the municipal corporation takes action to bring compliance, the expenses incurred by the municipal corporation to bring compliance constitute a lien against the property. **The lien attaches when notice of the lien is recorded in the office of the county recorder in which the property is located.** The lien is superior to all other liens except liens for taxes, in an amount that does not exceed:

(1) two thousand five hundred dollars (\$2,500) for real property that:

(A) contains one (1) or more occupied or unoccupied single or double family dwellings or the appurtenances or additions to those dwellings; or

(B) is unimproved; or

(2) ten thousand dollars (\$10,000) for all other real property not described in subdivision (1).

(b) The municipal corporation may issue a bill to the owner of the real property for the costs incurred by the municipal corporation in bringing the property into compliance with the ordinance, including administrative costs and removal costs.

(c) If the owner of the real property fails to pay a bill issued under subsection (b), the municipal corporation may, after thirty (30) days, certify to the county auditor the amount of the bill, plus any additional administrative costs incurred in the certification. The auditor shall place the total amount certified on the tax duplicate for the property affected, and the total amount, including any accrued interest, shall be collected as delinquent taxes and shall be disbursed to the general fund of the municipal corporation.

(c) A bill issued under subsection (b) is delinquent if the owner of the real property fails to pay the bill within thirty (30) days after the date of the issuance of the bill.

(d) Whenever a municipal corporation determines it necessary, the officer charged with the collection of fees and penalties for the municipal corporation shall prepare:

(1) a list of delinquent fees and penalties that are enforceable under this section, including:

(A) the name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent;

(B) a description of the premises, as shown on the records of the county auditor; and

(C) the amount of the delinquent fees and the penalty; or

(2) an instrument for each lot or parcel of real property on which the fees are delinquent.

(e) The officer shall record a copy of each list or each instrument with the county recorder, who shall charge a fee for recording the list or instrument under the fee schedule established in IC 36-2-7-10.

(f) The amount of a lien shall be placed on the tax duplicate by the auditor. The total amount, including any accrued interest, shall be collected in the same manner as delinquent taxes are collected and shall be disbursed to the general fund of the municipal corporation.

(g) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before conveyance to the subsequent owner. If the property is conveyed before the lien is recorded, the municipal corporation shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not later than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be considered a bad debt loss.

(h) The municipal corporation shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a written demand from the purchaser or a representative of the title insurance company or the title

insurance company's agent that issued a title insurance policy to the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

(i) The county auditor shall remove the fees, penalties, and service charges that were not recorded before a recorded conveyance to a subsequent owner upon receipt of a copy of the written demand under subsection (h).

SECTION 6. IC 36-3-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Liens for taxes levied by the consolidated city are perfected when ~~certified to the auditor of the county~~ **evidenced on the tax duplicate in the office of the treasurer of the county.**

(b) Liens created when the city enters upon property to make improvements to bring it into compliance with a city ordinance, and liens created upon failure to pay charges assessed by the city for services shall be certified to the auditor, after the adoption of a resolution confirming the incurred expense by the appropriate city department, board, or other agency. In addition, the resolution must state the name of the owner as it appears on the township assessor's record and a description of the property. ~~These liens are perfected when certified to the auditor.~~

(c) The amount of a ~~perfected~~ lien shall be placed on the tax duplicate by the auditor in the nature of a delinquent tax subject to enforcement and collection as otherwise provided under IC 6-1.1-22, IC 6-1.1-24, and IC 6-1.1-25. However, the amount of the lien is not considered a tax within the meaning of IC 6-1.1-21-2(b) and shall not be included as a part of either a total county tax levy under IC 6-1.1-21-2(g) or the tax liability of a taxpayer under IC 6-1.1-21-5 for purposes of the tax credit computations under IC 6-1.1-21-4 and IC 6-1.1-21-5.

SECTION 7. IC 36-9-23-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 32. (a) Fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not ~~less~~ **more** than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(c) A lien attaches against real property occupied by someone other than the owner only if the utility notified the owner within twenty (20) days after the time the utility fees became sixty (60) days delinquent. However, the utility is required to give notice to the owner only if the owner has given the general office of the utility written notice of the address to which ~~his~~ **the owner's** notice is to be sent.

(d) The municipality shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees.

SECTION 8. IC 36-11-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. A district may enforce delinquent fees and penalties in the manner described in ~~IC 13-26-13~~ **IC 36-9-23.**

SECTION 9. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 13-26-12; IC 13-26-13.

(Reference is to ESB 446 as reprinted March 29, 2005.)

GARD	WOLKINS
LANANE	DOBIS
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT  
ESB 341-1; filed April 26, 2005, at 1:34 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 341 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

**SECTION 1. IC 3-5-4-1.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1.7. Except as otherwise expressly authorized or required under this title, a filing by a person with a commission, the election division, or an election board may not be made by fax or electronic mail.**

**SECTION 2. IC 3-5-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. Except as otherwise provided in this title, a reference to a federal statute or regulation in this title is a reference to the statute or regulation as in effect January 1, 2003- 2005.**

**SECTION 3. IC 3-5-4-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) This section applies after December 31, 2003, whenever the individual who holds the office of circuit court clerk is a candidate on the ballot for any office.**

(b) As used in this section, "ballot" refers to an absentee ballot, a ballot card, or any other form of ballot.

(c) Notwithstanding any law requiring the name or signature of the circuit court clerk to appear on a ballot for authentication or any other purpose, the name or signature of the individual who is circuit court clerk may not appear on the ballot except to indicate that the individual is a candidate for an office.

(d) The circuit court clerk shall substitute a uniform device or symbol prescribed by the commission for the circuit court clerk's printed name or signature to authenticate a ballot.

**SECTION 4. IC 3-5-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The statement required by section 1 of this chapter must contain the following:**

- (1) A statement of the qualifications that an individual must meet to vote in Indiana, including qualifications relating to registration.
- (2) A statement describing the circumstances that permit a voter who has moved from the precinct where the voter is registered to return to that precinct to vote.
- (3) A statement that an individual who meets the qualifications and circumstances listed in subdivisions (1) and (2) may vote in the election.
- (4) A statement describing how a voter who is challenged at the polls may be permitted to vote.
- (5) The date of the election and the hours during which the polls will be open, as required by 42 U.S.C. 15482.
- (6) Instructions on how to vote, including how to cast a vote and how to cast a provisional ballot, as required by 42 U.S.C. 15482.
- (7) Instructions for mail-in registrants and first time voters under IC 3-7-33-4.5 and 42 U.S.C. 15483, as required under 42 U.S.C. 15482.
- (8) General information on voting rights under applicable federal and state laws, including the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated, as required under 42 U.S.C. 15482.
- (9) General information on federal and state laws regarding prohibitions on acts of fraud and misrepresentation, as required under 42 U.S.C. 15482.
- (10) A statement informing the voter what assistance is available to assist the voter at the polls.
- (11) A statement informing the voter what circumstances will spoil the voter's ballot and the procedures available for the voter

to request a new ballot.

(12) A statement describing which voters will be permitted to vote at the closing of the polls.

(13) Other information that the commission considers important for a voter to know.

**(b) The voter's bill of rights is not required to contain the information described in subsection (a)(5); (a)(6); (a)(7); (a)(8); and (a)(9) before January 1, 2004.**

**SECTION 5. IC 3-5-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) As required by 42 U.S.C. 15483, and after December 31, 2003, the precinct election board shall post the voter's bill of rights in a public place in each polling place on election day.**

(b) The commission may require a copy of the voter's bill of rights to be distributed with voter registration materials or other materials that are given to voters.

**SECTION 6. IC 3-6-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A person who is a candidate for elected office or after December 31, 2004, a member of a candidate's committee may not be appointed as:**

- (1) a member of a county election board;
- (2) a proxy of record for a member under section 4.5 of this chapter; or
- (3) an alternate proxy of record for a member under section 4.5 of this chapter.

(b) If an appointed member, a proxy, or an alternate proxy becomes:

- (1) a candidate for elected office; or
- (2) after December 31, 2004, a member of a candidate's committee;

the member, proxy, or alternate proxy may not continue to serve on the county election board.

(c) An appointed member, a proxy, or an alternate proxy may not hold elected office while serving on the county election board.

(d) The circuit court clerk may not be a member of a candidate's committee other than the clerk's own candidate's committee.

**SECTION 7. IC 3-6-5-34 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 34. Except as expressly provided by statute, an appeal may be taken from a decision of a county election board to the circuit court. An appeal taken under this section must be filed not later than thirty (30) days after the board makes the decision subject to the appeal.**

**SECTION 8. IC 3-6-5-35 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 35. (a) An individual who knowingly, recklessly, or negligently fails to perform a duty as a precinct election officer required by this title is subject to a civil penalty under this section in addition to any other penalty imposed.**

**(b) If the county election board determines, by unanimous vote of the entire membership of the board, that an individual serving as a precinct election officer has failed to perform a duty required by this title, the board shall assess the individual a civil penalty of not more than five hundred dollars (\$500).**

**(c) A civil penalty assessed under this section may be deducted from any compensation that the individual may otherwise be entitled to under IC 3-6-6.**

**SECTION 9. IC 3-6-5.2-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.5. (a) This section applies after December 31, 2004. A person who is a candidate for elected office or a member of a candidate's committee may not be appointed as a member of the board.**

(b) If an appointed member becomes a:

- (1) candidate for elected office; or
- (2) member of a candidate's committee;

the member may not continue to serve on the board.

(c) An appointed member may not hold elected office while a member of the board.

(d) The circuit court clerk may not be a member of a candidate's committee other than the clerk's own candidate's committee.

**SECTION 10. IC 3-6-5.2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) As used in this section, before July 1, 1999, "board" refers to the combined county**

election board and board of registration:

(b) The board may, by a vote of a majority of the members of the board, hire attorneys to provide legal services for the board, as determined by the board.

SECTION 11. IC 3-6-5.2-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 9. Except as expressly provided by statute, an appeal may be taken from a decision of the board to the circuit court. An appeal taken under this section must be filed not later than thirty (30) days after the board makes the decision subject to the appeal.**

SECTION 12. IC 3-6-5.4-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.5. (a) ~~This section applies after December 31, 2004.~~ A person who is a candidate for elected office or a member of a candidate's committee may not be appointed as a member of the board.

(b) If an appointed member becomes a:

- (1) candidate for elected office; or
- (2) member of a candidate's committee;

the member may not continue to serve on the board.

(c) An appointed member may not hold elected office while a member of the board.

(d) The circuit court clerk may not be a member of a candidate's committee other than the clerk's own candidate's committee.

SECTION 13. IC 3-6-5.4-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 10. Except as expressly provided by statute, an appeal may be taken from a decision of the board to the circuit court. An appeal taken under this section must be filed not later than thirty (30) days after the board makes the decision subject to the appeal.**

SECTION 14. IC 3-6-6-37 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 37. (a) When the county election board (or a precinct election board acting on behalf of the county election board) appoints a precinct election officer and the individual accepts the appointment by swearing the oath of office required under this chapter, a contract is created between the county election board and the individual in which the county election board retains the services of the precinct election officer as an independent contractor.

(b) The appointment of a precinct election officer expires when the county election board completes the canvass of the precinct under IC 3-12-4.

**(c) For purposes of Article 2, Section 9 of the Constitution of the State of Indiana, the position of precinct election officer is not a lucrative office.**

SECTION 15. IC 3-6-6-39 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 39. (a) The county election board by unanimous vote of the entire membership of the board may permit an individual who is not a voter to serve as any precinct election officer (other than inspector), or to assist a precinct election officer, if the individual satisfies all the following:

- (1) The individual is at least sixteen (16) years of age but not more than seventeen (17) years of age.
- (2) The individual is a citizen of the United States.
- (3) The individual is a resident of the county.
- (4) The individual has a cumulative grade point average equivalent to not less than 3.0 on a 4.0 scale.
- (5) The individual has the written approval of the principal of the school the individual attends at the time of the appointment or, if the student is educated in the home, the approval of the individual responsible for the education of the student.
- (6) The individual has the approval of the individual's parent or legal guardian.
- (7) The individual has satisfactorily completed any training required by the county election board.
- (8) The individual otherwise is eligible to serve as a precinct election officer under this chapter.

(b) ~~After January 1, 2004,~~ An individual appointed to a precinct election office or assistant under this section:

- (1) must serve in a nonpartisan manner in accordance with the standards developed by the Help America Vote Foundation under 36 U.S.C. 152602; and

- (2) while serving as a precinct election officer or assistant:
  - (A) is not required to obtain an employment certificate under IC 20-33-3; and
  - (B) is not subject to the limitations on time and duration of employment under IC 20-33-3.

SECTION 16. IC 3-6-6-40 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 40. (a) The county election board shall conduct a training and educational meeting for precinct election officers.

(b) The board shall require inspectors to attend the meeting and may require other precinct election officers to attend the meeting. **The board shall maintain a record of the attendance of each individual at the meeting conducted under this subsection.**

(c) The meeting required under this section must include information:

- (1) relating to making polling places and voting systems accessible to elderly voters and disabled voters; and
- (2) relating to the voting systems used in the county.

The meeting may include other information relating to the duties of precinct election officers as determined by the county election board.

(d) The meeting required by this section must be held not later than the day before election day.

(e) If an individual:

- (1) is appointed as a precinct election officer after the training and educational meeting conducted under this section; or
- (2) demonstrates to the county election board that the individual was unable to attend the meeting due to good cause;

the county election board may authorize the individual to serve as a precinct election officer if the county election board determines that there is insufficient time to conduct the training required by this section.

SECTION 17. IC 3-6-6.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

#### **Chapter 6.5. Certified Election Worker Program**

**Sec. 1. The certified election worker program is established.**

**Sec. 2. The program must consist of courses in several aspects of precinct election administration, including the following:**

- (1) The duties of precinct election officers and county election officials.
- (2) The laws governing activity permitted and prohibited in polling places.
- (3) The laws and procedures governing the operation of voting systems.
- (4) The laws governing voter registration, absentee ballots, provisional ballots, and the tabulation of ballots.
- (5) Effective communication and problem solving techniques.

**Sec. 3. The secretary of state:**

- (1) shall administer the program; and
- (2) may establish procedures and requirements for the certification of an individual who satisfactorily completes the program.

**Sec. 4. The designation of an individual as a certified election worker expires January 1 of the fourth year following the individual's certification. The individual's certification may be renewed by the secretary of state after compliance with the requirements for renewal established under this chapter.**

SECTION 18. IC 3-6-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Each political party or independent candidate may appoint challengers and pollbook holders for each precinct in which the political party or independent candidate is on the ballot.

(b) This subsection applies to a public question that is submitted to the electorate. A county election board may appoint challengers and pollbook holders if a petition requesting the appointment is filed with the board. The petition must be signed by:

- (1) the chairman of a political action committee organized under IC 3-9 to support or oppose the approval of the public question; and
- (2) at least the number of voters equal to two percent (2%) of the votes cast in the last election for secretary of state in the county.

- (c) A challenger must be at least eighteen (18) years of age.
- (d) The county election board, county chairman, other local chairman of the party, or independent candidate:
  - (1) must make the appointments in writing; and
  - (2) shall issue one (1) identification card for each person appointed under this section.
- (e) Each political party or independent candidate described in subsection (a) or a political action committee described in subsection (b) may have only one (1) challenger and one (1) pollbook holder present at each precinct's polls at any time during election day. The challenger and pollbook holder present at the polls must possess an identification card issued under subsection (d).

**(f) The identification card issued under subsection (d) must clearly state the following:**

- (1) The status of the individual as an appointed challenger or pollbook holder.**
- (2) The name of the individual serving as a challenger or pollbook holder.**
- (3) The name of the person who appointed the individual as a challenger or pollbook holder, and whether the person is a political party, an independent candidate, or a county election board.**
- (4) If the challenger or pollbook holder has been appointed by a political party, the name of the political party.**

SECTION 19. IC 3-6-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) A pollbook holder **or a challenger** appointed under this chapter is entitled to do the following:

- (1) Enter the polls at least thirty (30) minutes before the opening of the polls and remain there throughout election day until the polls close.
- (2) Enter, leave, and reenter the polls at any time on election day.

(b) A pollbook holder **or a challenger** is subject to the orders of the board while in the polls.

(c) If demanded by a member of the precinct election board, a pollbook holder **or a challenger** shall produce the identification card issued under section 1(d) of this chapter.

SECTION 20. IC 3-6-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A watcher present at the polls must possess an identification card issued under this section and present the card if demanded by a member of the precinct election board.

(b) The county election board, county chairman, or chairman of the committee of the independent candidate for a federal or a state office:

- (1) must appoint each watcher in writing; and
- (2) shall issue one (1) watcher identification card for each person appointed as a watcher.

(c) The identification card must be signed by the chairman of the county election board, county chairman of the party, or chairman of the committee of the independent candidate for a federal or a state office that the watcher represents.

**(d) The identification card described in subsection (a) must clearly state the following:**

- (1) The status of the individual as an appointed watcher.**
- (2) The name of the individual serving as a watcher.**
- (3) The name of the person who appointed the individual as a watcher.**
- (4) If the individual has been appointed as a watcher by a political party, the name of the political party.**

SECTION 21. IC 3-6-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. When the attorney-in-fact has certified the names of the watchers in writing under section 4 of this chapter to the circuit court clerk, the clerk shall immediately issue certificates to the persons named. The certificates entitle the watchers to go to the precincts designated in the statement. Each watcher's credentials must state the following:

- (1) The name of the attorney-in-fact who certified the watcher to the clerk.**
- (2) The status of the individual as a watcher appointed under this chapter.**
- (3) The name of the individual serving as a watcher.**

**(4) If the watcher is acting on behalf of a school board candidate, or a group of political party candidates, the name of the school board candidate or political party whose candidates have petitioned for watchers under this chapter.**

SECTION 22. IC 3-6-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Each person who acts as a watcher under this chapter must obtain a watcher identification card from the county election board. **The identification card issued under this subsection must clearly state the following:**

- (1) The status of the individual as an appointed watcher.**
- (2) The name of the individual serving as a watcher.**
- (3) The name of the person that appointed the individual as a watcher.**

(b) Watchers appointed under this chapter do not have a voice or vote in any proceeding of a precinct election board. The watchers may attend the election as witnesses only and are subject to the orders of the board.

(c) Except as provided in subsection (d), a watcher appointed under this chapter may photograph the proceedings of a precinct election board.

(d) A watcher appointed under this chapter may not photograph a voter:

- (1) while the voter is in the polls if the voter informs the precinct election board that the voter objects to being photographed by the watcher; or
- (2) in a manner that permits the watcher to see or know for what ticket, candidates, or public questions the voter has voted.

SECTION 23. IC 3-8-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A declaration of candidacy for a primary election must be filed ~~no not~~ later than noon seventy-four (74) days and ~~no not~~ earlier than one hundred four (104) days before the primary election. The declaration must be subscribed and sworn to before a person authorized to administer oaths.

(b) A declaration of intent to be a write-in candidate must be filed:

- (1) not earlier than the first date specified in IC 3-8-6-10(b) for the timely filing of a petition of nomination; and**
- (2) not later than noon on the date specified by IC 3-13-1-15(c) for a major political party to file a certificate of candidate selection.**

The declaration must be subscribed and sworn to before a person authorized to administer oaths.

(c) During a year in which a federal decennial census, federal special census, special tabulation, or corrected population count becomes effective under IC 1-1-3.5, a declaration of:

- (1) candidacy may be filed for an office that will appear on the primary election ballot; or
- (2) intent to be a write-in candidate for an office that will appear on the general, municipal, or school board election ballot;

that year as a result of the new tabulation of population or corrected population count.

SECTION 24. IC 3-8-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) A declaration of candidacy may be made by mail and is considered filed as of the date and hour it is ~~received~~ **the filing occurs in the manner described by IC 3-5-2-24.5** in the office of the election division or circuit court clerk.

~~(b) A declaration of candidacy may not be made by telegraph or facsimile transmission.~~

~~(c)~~ **(b)** A declaration is not valid unless received in the office of the election division or circuit court clerk by noon on the seventy-fourth day before a primary election.

~~(d) An officer receiving a declaration may require information supporting the eligibility of the candidate and, where applicable, (c) This subsection applies to a candidate required to file a statement of economic interest under IC 2-2.1-3-2 or IC 33-23-11-15 or a financial disclosure statement under IC 4-2-6-8. The election division shall require the candidate to produce a:~~

- (1) copy of the statement, file stamped by the office required to receive the statement of economic interests; or**
- (2) receipt showing that statements of economic interest or other prerequisite filings have the statement has been made filed;**

before the ~~officer~~ **election division** accepts the declaration for filing.

**The election division shall reject a filing that does not comply with this subsection.**

SECTION 25. IC 3-8-2-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. (a) A person who files a declaration of candidacy under this chapter may, at any time not later than noon seventy-one (71) days before the date set for holding the primary election, file a statement with the same office where the person filed the declaration of candidacy, stating that the person is no longer a candidate and does not wish the person's name to appear on the primary election ballot as a candidate.

**(b) A candidate who is disqualified from being a candidate under IC 3-8-1-5 must file a notice of withdrawal immediately upon becoming disqualified. The filing requirements of subsection (a) do not apply to a notice of withdrawal filed under this subsection.**

**(c) A candidate who has moved from the election district the candidate sought to represent must file a notice of withdrawal immediately after changing the candidate's residence. The filing requirements of subsection (a) do not apply to a notice of withdrawal filed under this subsection.**

SECTION 26. IC 3-8-3-9, AS AMENDED BY SEA 482-2005, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) Each circuit court clerk shall, not later than noon Monday after the day the primary election is held, send to the election division by certified mail or hand delivery one (1) complete copy of all returns for presidential candidates. The clerk shall state the number of votes received by each candidate in each congressional district within the county.

**(b) The A statement described in subsection (a) may be sent by using the computerized list established under IC 3-7-26.3. A statement sent under this subsection complies with any requirement for the statement to be certified or sealed.**

SECTION 27. IC 3-8-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) This section applies to each political party that elects delegates to the party's state convention at a primary election.

(b) Delegates to a state convention shall be chosen at the primary election conducted by the political party on the first Tuesday after the first Monday in May ~~2000~~ 2006 and every two (2) years thereafter. If provided in the rules of the state committee of the political party, delegates may be elected from delegate districts in each county.

(c) Not later than noon November 30 of the year preceding the year in which the state convention is to be conducted, the state chairman of a political party shall certify the following to the election division and to each county committee of the party:

- (1) The number of delegates to be elected in each county.
- (2) Whether the delegates are to be elected from districts or at large in each county.
- (3) If a county is to elect delegates from districts, how many districts must be established in each county.

(d) The county committee shall establish any delegate districts required to be established under subsection (c) and file descriptions setting forth the district boundaries with the county election board not later than noon December 31 of the year preceding the year the state convention is to be conducted. If the county committee does not timely file district descriptions under this subsection, the county election board shall establish districts not later than the first day that a declaration of candidacy may be filed under IC 3-8-2-4, and apportion the delegates to be elected from each district in accordance with subsection (c).

SECTION 28. IC 3-8-5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) If more than one (1) candidate from the same political party files a declaration of candidacy for the same office, that political party shall conduct:

- (1) a town convention under this chapter; or
- (2) a primary election;

to choose the nominee of that party for that office as provided in the ordinance adopted under section 2 of this chapter.

(b) If a town convention is required under subsection (a), the town chairman shall organize, conduct, and issue a call for a town convention to be held in the town, or, if there is no suitable location in the town, then either at the nearest available location within any county in which the town is located or at the county seat of any

county in which the town is located.

(c) The convention must be held before August 21 in each year in which a municipal election is to be held. The purpose of the convention is to select the nominees for all town offices to be elected at the next municipal election and for which more than one (1) declaration of candidacy has been filed.

(d) The chairman shall file a notice of the call with the circuit court clerk of the county containing the greatest percentage of population of the town. The chairman shall also have notice of the call posted at least three (3) days in three (3) prominent public places in the town, including the office of the clerk-treasurer. The notice must state the time, place, and purpose of the convention.

**(e) If the county chairman determines that an emergency requires the rescheduling of a town convention after notice has been given under subsection (d), the chairman shall promptly file a notice in the office of the county election board and in the office of the town clerk-treasurer stating the date, time, and place of the rescheduled convention.**

SECTION 29. IC 3-8-5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) The town chairman and secretary of each town political party committee shall act as chairman and secretary of their respective conventions.

(b) As the first item of convention business, the town chairman shall make the initial determination regarding which individuals are eligible to vote in the town convention under section 11 of this chapter. If an individual objects to the determination of the chairman, the matter shall be put to the vote of all those individuals whose eligibility to vote is not in dispute.

(c) As the second item of convention business, the town chairman shall submit copies of proposed rules to the members of the convention for adoption. The rules must provide for at least the following:

- (1) The voting method to be used for nominating candidates at the convention.
- (2) The method to be used for resolving tie votes.
- (3) Any method for removing candidates from consideration by the convention if no candidate receives a majority vote from all voters casting a ballot at the convention.
- (4) The rights of nonvoting observers, media, candidate watchers, or others attending the convention.

(d) If the town chairman of the political party committee is unable or unwilling to act as chairman of the convention, the secretary acts as chairman until the convention elects a chairman of the convention from among the voters attending the convention. If the town secretary of the political party committee is unable or unwilling to act as secretary of the convention, the convention shall elect a secretary of the convention from among the voters attending the convention.

(e) After adoption of the convention rules, the convention may proceed to vote on the candidates to be nominated. The candidates for town offices must be nominated by a majority of the voters present and voting.

**(f) The town convention may recess and reconvene if a majority of eligible voters at the convention adopt a motion to recess and reconvene. The motion must state the date, time, and location of the reconvening of the convention. However, a convention may not reconvene on a date following the final date permitted for a convention to be convened under section 10 of this chapter.**

SECTION 30. IC 3-8-6-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) A petition of nomination must state all of the following:

- (1) The name of each candidate as:
  - (A) the candidate wants the candidate's name to appear on the ballot; and
  - (B) the candidate's name is permitted to appear on the ballot under IC 3-5-7.
- (2) The address of each candidate, including the mailing address, if different from the residence address of the candidate.
- (3) The office that each candidate seeks.
- (4) The information required under IC 3-10-4-5, if the petition nominates candidates for presidential electors.
- (5) That the petitioners desire and are registered and qualified to vote for each candidate.



(6) Whether the candidate is affiliated with the same political party as any other candidate or group of candidates that has filed or will be filing a petition of nomination with the county voter registration office under section 10 of this chapter. This subdivision

~~(A) applies after December 31, 2004; and~~

~~(B) does not apply to an independent candidate.~~

(b) A petition of nomination must:

- (1) designate a brief name of the political party that the candidates represent;
- (2) indicate that the candidate is an independent candidate; or
- (3) indicate that the candidates are an independent ticket.

(c) If a political party has previously filed a device with the election division under IC 3-8-7-11, the petition may incorporate that device by reference in the petition. If a political party has not previously filed a device under IC 3-8-7-11, or the petition is for an independent ticket, the petition of nomination may include a device for designating the party or ticket on the ballot.

SECTION 31. IC 3-8-7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) Except as provided in subsection (f), if a political party has filed a statement with the election division (or any of its predecessors) that the device selected by the political party be used to designate the candidates of the political party on the ballot for all elections throughout the state, the device must be used until:

- (1) the device is changed in accordance with party rules; and
- (2) a statement concerning the use of the new device is filed with the election division.

(b) Except as provided in subsection (c), the device may be any appropriate symbol.

(c) A political party or an independent candidate may not use as a device:

- (1) a symbol that has previously been filed by a political party or candidate with the election division (or any of its predecessors);
- (2) the coat of arms or seal of the state or of the United States;
- (3) the national or state flag; or
- (4) any other emblem common to the people.

(d) Not later than noon, August 20, before each **general or municipal** election,

~~(1) the state chairman of each political party whose candidates are to be certified under this section; or~~

~~(2) an individual filing a petition of nomination for candidates to be certified under this section;~~

**shall file with the election division shall provide each county election board with a camera-ready copy of the device under which the candidates of the political party or the petitioner are to be listed so that ballots may be prepared using the best possible reproduction of the device.**

(e) This subsection applies to a candidate or political party whose ~~name or device is not filed with the election division under subsection (a) and is to be printed only on ballots prepared by a county election board:~~ **to identify candidates for election to a local office.** Not later than noon, August 20, the chairman of the political party or the petitioner of nomination shall file a camera-ready copy of the device under which the candidates of the political party or the petitioner are to be listed with the county election board of each county in which the name of the candidate or party will be placed on the ballot. The county election board shall provide the camera-ready copy of the device to the town election board of a town located wholly or partially within the county upon request by the town election board.

(f) If a copy of the device is not filed in accordance with subsection ~~(d)~~ (a) or (e), or unless a device is designated in accordance with section 26 or 27 of this chapter, the ~~election division~~, county election board or town election board is not required to use any device to designate the list of candidates.

SECTION 32. IC 3-8-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

**Chapter 8. Removal of Name From Ballot of a Candidate for Legislative or State Offices at a General Election for Disqualification or Withdrawal**

**Sec. 1. (a) This chapter applies only to a candidate for election to any of the following:**

- (1) A legislative office.**
- (2) A state office other than a judicial office.**

**(b) This chapter applies notwithstanding any other law relating to challenges to the qualifications of a candidate to be elected at a general election.**

**Sec. 2. A candidate may not be challenged under this chapter if all of the following apply:**

- (1) The candidate's qualification was previously challenged under this chapter or other applicable law.**
- (2) This challenge would be based on substantially the same grounds as the previous challenge to the candidate.**
- (3) The commission conducted a hearing on the challenge and made a final determination in favor of the candidate.**

**Sec. 3. (a) An individual who challenges the qualification of a candidate for election to an office must be a registered voter of the election district the candidate seeks to represent.**

**(b) A challenge under this chapter must be filed with the election division not later than forty (40) days before the date of the general election at which a candidate to the office is to be elected.**

**(c) The challenger must file a sworn statement with the election division:**

- (1) questioning the qualification of a candidate to seek the office; and**
- (2) setting forth the facts known to the voter concerning this question.**

**Sec. 4. The commission shall do the following not later than three (3) business days after the challenger's sworn statement is filed under section 3 of this chapter:**

- (1) Meet to hear the challenge.**
- (2) Conclude the hearing.**

**Sec. 5. (a) Not later than one (1) business day after concluding the hearing, the commission shall announce its determination on the matter.**

**(b) If the commission does not announce a determination on the matter as provided in subsection (a), the commission is considered to have:**

- (1) dismissed the challenge; and**
- (2) taken final action on the challenge.**

**Sec. 6. The candidate or the challenger may appeal any final action:**

- (1) that the commission has taken; or**
- (2) that the commission is considered to have taken under section 5 of this chapter;**

**to the court of appeals for errors of law under the same terms, conditions, and standards that govern appeals in ordinary civil actions. An assignment of errors that the commission's final action is contrary to law is sufficient to present both the sufficiency of the facts found to sustain the commission's action and the sufficiency of the evidence to sustain the finding of facts upon which the commission's action was rendered.**

**Sec. 7. (a) Regardless of the status of a challenge before the commission or the court of appeals, at noon thirty (30) days before the general election the following apply:**

- (1) The challenge is terminated.**
- (2) The name of the challenged candidate may not be removed from the ballot.**
- (3) The name of another individual may not replace the name of the challenged candidate on the ballot.**
- (4) Any votes cast for the challenged candidate shall be canvassed, counted, and reported under the name of the challenged candidate.**

**(b) All of the following apply if a candidate attempts to withdraw as a candidate after noon thirty (30) days before the general election:**

- (1) The name of the candidate may not be removed from the ballot.**
- (2) The name of another individual may not replace the name of the candidate on the ballot.**
- (3) Any votes cast for the candidate shall be canvassed, counted, and reported under the name of the candidate.**

**Sec. 8. (a) This section applies if a candidate whose name**



remains on the ballot under section 7 of this chapter receives the most votes in the general election among all candidates for the office.

(b) If, after the election, it is determined as provided by law that the individual was not qualified to be elected to the office, it shall be considered that:

(1) an eligible candidate of the same political party, if any, as the ineligible candidate had been elected; and

(2) a vacancy in the office occurred after the election.

(c) The vacancy in the office shall be filled as otherwise provided by law.

SECTION 33. IC 3-10-1-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.5. (a) Precinct committeemen shall be elected on the first Tuesday after the first Monday in May ~~2002~~ 2006 and every four (4) years thereafter.

(b) The rules of a political party may specify whether a precinct committeeman elected under subsection (a) continues to serve as a precinct committeeman after the boundaries of the precinct are changed by a precinct establishment order issued under IC 3-11-1.5.

SECTION 34. IC 3-10-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) In those precincts where ballot card voting systems are to be used, each county election board shall prepare and distribute separate primary paper ballots for each political party participating in a primary election at least equal in number to one hundred percent (100%) of the number of votes cast by for the candidate of the party who received the greatest number of votes cast in each the precinct at the last general election. ~~If voting machines, ballot card voting systems, or~~

(b) In those precincts where electronic voting systems are to be used, the board shall determine the number of ~~emergency paper~~ ballots required to be printed and furnished to the precincts for emergency purposes only.

SECTION 35. IC 3-10-1-31.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31.1. (a) This section applies only to election materials for elections held after December 31, 2003.

(b) The inspector of each precinct shall deliver the bags required by section 30(a) and 30(c) of this chapter in good condition, together with poll lists, tally sheets, and other forms, to the circuit court clerk when making returns.

(c) Except for unused ballots disposed of under IC 3-11-3-31 or affidavits received by the county election board under IC 3-14-5-2 for delivery to the foreman of a grand jury, the circuit court clerk shall seal the ballots and other material during the time allowed to file a verified petition or cross-petition for a recount of votes or to contest the election. Except as provided in subsection (d), after the recount or contest filing period, the election material (except for ballots, which remain confidential) shall be made available for copying and inspection under IC 5-14-3. The circuit court clerk shall carefully preserve the sealed ballots and other material for twenty-two (22) months, as required by 42 U.S.C. 1974, after which the sealed ballots and other material are subject to IC 5-15-6 unless an order issued under:

(1) IC 3-12-6-19 or IC 3-12-11-16; or

(2) 42 U.S.C. 1973;

requires the continued preservation of the ballots or other material.

(d) If a petition for a recount or contest is filed, the material for that election remains confidential until completion of the recount or contest.

(e) ~~This subsection applies before January 1, 2006.~~ Upon delivery of the poll lists, the county voter registration office may unseal the envelopes containing the poll lists. For the purposes of:

(1) a cancellation of registration conducted under IC 3-7-43 through IC 3-7-46;

(2) a transfer of registration conducted under IC 3-7-39, IC 3-7-40, or IC 3-7-42;

(3) a change of name made under IC 3-7-41;

(4) adding the registration of a voter under IC 3-7-48-8; or

(5) recording that a voter subject to IC 3-7-33-4.5 submitted the documentation required under 42 U.S.C. 15483 and IC 3-11-8 or IC 3-11-10;

the county voter registration office may inspect the poll lists and

update the registration record of the county. The county voter registration office shall use the poll lists to update the registration record to include the voter's voter identification number if the voter's voter identification number is not already included in the registration record. Upon completion of the inspection, the poll list shall be preserved with the ballots and other materials in the manner prescribed by subsection (c) for the period prescribed by subsections (c) and (d).

(f) ~~This subsection applies after December 31, 2005. Upon delivery of the poll lists, the county voter registration office may unseal the envelopes containing the poll lists. For purposes of:~~

(1) ~~a cancellation of registration conducted under IC 3-7-43 through IC 3-7-46;~~

(2) ~~a transfer of registration conducted under IC 3-7-39, IC 3-7-40, or IC 3-7-42;~~

(3) ~~a change of name made under IC 3-7-41; or~~

(4) ~~adding the registration of a voter under IC 3-7-48-8;~~

the county voter registration office may inspect the poll lists and update the registration record of the county. The county voter registration office shall use the poll lists to update the registration record to include the voter's current voter identification number if the voter's voter identification number is not included in the registration record. Upon completion of the inspection, the poll list shall be preserved with the ballots and other materials in the manner prescribed by subsection (c) for the period prescribed by subsections (c) and (d).

(g) ~~(f)~~ This subsection does not apply to ballots. Notwithstanding subsection (c), if a county voter registration office determines that the inspection and copying of precinct election material would reveal the political parties, candidates, and public questions for which an individual cast an absentee ballot, the county voter registration office shall keep confidential only that part of the election material necessary to protect the secrecy of the voter's ballot.

(h) ~~(g)~~ After the expiration of the period described in subsection (c) or (d), the ballots may be destroyed in the manner provided by IC 3-11-3-31 or transferred to a state educational institution as provided by IC 3-12-2-12.

SECTION 36. IC 3-10-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. Electors for President and Vice-President of the United States shall be elected in ~~2000~~ 2008 and every four (4) years thereafter at a general election held in accordance with 3 U.S.C. 1.

SECTION 37. IC 3-10-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. United States Senators shall be elected at a general election held in accordance with 2 U.S.C. 1 and as follows:

(1) One (1) in ~~2000~~ 2006 and every six (6) years thereafter.

(2) One (1) in ~~2004~~ 2010 and every six (6) years thereafter.

SECTION 38. IC 3-10-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. The following public officials shall be elected in ~~2000~~ 2008 and every four (4) years thereafter:

(1) Governor.

(2) Lieutenant governor.

(3) Attorney general.

(4) Superintendent of public instruction.

SECTION 39. IC 3-10-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. The following public officials shall be elected in ~~2002~~ 2006 and every four (4) years thereafter:

(1) Secretary of state.

(2) Auditor of state.

(3) Treasurer of state.

SECTION 40. IC 3-10-2-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. A prosecuting attorney shall be elected in each judicial circuit in ~~2002~~ 2006 and every four (4) years thereafter in accordance with Article 7, Section 16 of the Constitution of the State of Indiana.

SECTION 41. IC 3-10-4-1, AS AMENDED BY SEA 14-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The names of the candidates of:

(1) a political party;

(2) a group of petitioners under IC 3-8-6; or  
 (3) a write-in candidate for the office of President or Vice President of the United States under IC 3-8-2-5;  
 for electors of President and Vice President of the United States may not be placed on the ballot.

(b) The names of the nominees for President and Vice President of the United States of each political party or group of petitioners shall be placed:

- (1) in one (1) column on the ballot if paper ballots are used; ~~or~~  
~~(2) on one (1) ballot label in one (1) column or row if voting machines are used;~~  
~~(3) (2) either:~~
  - (A) grouped together on a separate screen; or
  - (B) grouped together below the names of the offices as specified in IC 3-11-14-3.5;
- if an electronic voting system is used; or
- (4) grouped together below the names of the offices as specified in IC 3-11-13-11 if a ballot card is used.

(c) ~~The name of each ballot must permit a voter to cast a ballot for a write-in candidate for the office of President or Vice President of the United States shall be placed as in the manner provided under IC 3-11-2-6.~~

SECTION 42. IC 3-10-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Except as otherwise provided in this chapter, a municipal primary election shall be held on the first Tuesday after the first Monday in May ~~2003~~ 2007 and every four (4) years thereafter.

(b) Each political party whose nominee received at least ten percent (10%) of the votes cast in the state for secretary of state at the last election shall nominate all candidates to be voted for at the municipal election to be held in November.

SECTION 43. IC 3-10-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) Notwithstanding section 2 of this chapter, in a town that adopted an ordinance under IC 18-3-1-16(b) (before its repeal on September 1, 1981), P.L.13-1982, SECTION 3 (before its expiration on January 1, 1988), or section 2.5 of this chapter each political party shall, at the primary election in:

- (1) May ~~2002~~ 2006 and every four (4) years thereafter; and
- (2) May ~~2003~~ 2007 and every four (4) years thereafter;

nominate candidates for the election to be held under section 6(a) of this chapter, unless a primary election is not required under section 4 of this chapter. The primary election shall be conducted under this chapter.

(b) Notwithstanding section 2 of this chapter, in a town that adopted an ordinance under section 2.6 of this chapter each political party shall, at the primary election in:

- (1) May ~~2002~~ 2006 and every four (4) years thereafter; and
- (2) May ~~2004~~ 2008 and every four (4) years thereafter;

nominate candidates for the election to be held under section 6(b) of this chapter, unless a primary election is not required under section 4 of this chapter. The primary election shall be conducted under this chapter.

(c) Notwithstanding section 2 of this chapter, in a town that adopted an ordinance under section 2.6 of this chapter each political party shall, at the primary election in May ~~2004~~ 2008 and every four (4) years thereafter, nominate candidates for the election to be held under section 6(c) of this chapter, unless a primary election is not required under section 4 of this chapter. The primary election shall be held under this chapter.

SECTION 44. IC 3-10-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Notwithstanding section 5 of this chapter, a town that adopted an ordinance under IC 18-3-1-16(b) (before its repeal on September 1, 1981), P.L.13-1982, SECTION 3 (before its expiration on January 1, 1988), or section 2.5 of this chapter shall:

- (1) at the general election in November ~~2002~~ 2006 and every four (4) years thereafter; and
- (2) at the municipal election in November ~~2003~~ 2007 and every four (4) years thereafter;

elect town council members for terms of four (4) years to those offices whose terms expire at noon January 1 following the election, as provided in IC 36-5-2-3. The election shall be conducted under this

chapter.

(b) Notwithstanding section 5 of this chapter, a town that adopted an ordinance under section 2.6 of this chapter shall:

- (1) at the general election in November ~~2002~~ 2006 and every four (4) years thereafter; and
- (2) at the general election in November ~~2004~~ 2008 and every four (4) years thereafter;

elect town council members for terms of four (4) years to those offices whose terms expire at noon January 1 of the following year. The election shall be conducted under this chapter.

(c) Notwithstanding section 5 of this chapter, a town that adopted an ordinance under section 2.6 of this chapter shall, at the general election in November ~~2004~~ 2008 and every four (4) years thereafter, elect a town clerk-treasurer and town court judge (if a town court has been established under IC 33-35-1-1) to those offices whose terms expire at noon January 1 of the following year. The election shall be conducted under this chapter.

SECTION 45. IC 3-10-7-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 22. (a) A town election board shall appoint a precinct election board for each precinct in the town.

(b) If a precinct is wholly or partly in the town, the town election board may designate the polls for the precinct to be at the polls for an adjoining precinct, using the precinct election board of the adjoining precinct.

**(c) If a precinct election board administers more than one (1) precinct under subsection (b), the board shall keep the ballots cast in each precinct separate from ballots cast in any other precinct, so that the votes cast for each candidate and on each public question in each of the precincts administered by the board may be determined.**

~~(c) (d)~~ (d) Each precinct election board consists of:

- (1) one (1) inspector; and
- (2) two (2) judges of opposite political parties.

(e) The members of a precinct election board must be voters who reside in the town.

SECTION 46. IC 3-10-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Except as provided in subsection (b) or (c), if a special election is held at a time other than the time of a general election, the election shall be held in accordance with this title. Each county election board and other local public official who is required to perform any duties in connection with a general election shall perform the same duties for the special election, subject to the same provisions and penalties as for a general election.

(b) If a special election is held:

- (1) under a court order under IC 3-12-8; or
- (2) for a local public question;

the county election board may provide that several precincts may vote in the special election at the same polling place, if the county election board finds by unanimous vote of the entire membership of the board that the consolidation of polling places will not result in undue inconvenience to voters.

(c) If a special election is held:

- (1) under a court order under IC 3-12-8 for a school board office; or
- (2) for a local public question;

the county election board may by unanimous vote of the entire membership of the board adopt a resolution to provide that each precinct election board will include only one (1) inspector and one (1) judge, and that only one (1) sheriff and one (1) poll clerk may be nominated as precinct election officers. If the board has adopted a resolution under subsection (b), a resolution adopted under this subsection may also provide for more than one (1) precinct to be served by the same precinct election board. A resolution adopted under this subsection may not be rescinded by the county election board and expires the day after the special election is conducted.

(d) The following procedures apply if a county election board adopts a resolution under subsection (c):

- (1) The inspector shall be nominated by the county chairman entitled to nominate an inspector under IC 3-6-6-8.
- (2) The judge shall act as a clerk whenever this title requires that two (2) clerks perform a duty.

(3) The poll clerk shall act as a judge whenever this title requires that two (2) judges perform a duty.

**(4) If a precinct election board administers more than one (1) precinct, the board shall keep the ballots cast in each precinct separate from ballots cast in any other precinct, so that the votes cast for each candidate and on each public question in each of the precincts administered by the board may be determined.**

SECTION 47. IC 3-10-12-3.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3.4. (a) This section applies to a voter who:**

**(1) changes residence from a precinct in a county to another precinct:**

**(A) in the same county; and**

**(B) in the same congressional district; as the former precinct; and**

**(2) does not notify the county voter registration office of the change of address before election day.**

**(b) A voter described by subsection (a) may:**

**(1) correct the voter registration record; and**

**(2) vote in the precinct where the voter formerly resided;**

**if the voter makes an oral affirmation as described in subsection (e) or a written affirmation as described in section 4 of this chapter of the voter's current residence address.**

**(c) A voter who moved outside of a municipality may not return to the precinct where the voter formerly resided to vote in a municipal election.**

**(d) A voter who moved from a location outside a municipality to a location within a municipality within thirty (30) days before a:**

**(1) municipal primary election;**

**(2) municipal election; or**

**(3) special election held only within the municipality;**

**may not vote in the election in the precinct of the person's former residence.**

**(e) A voter entitled to make a written affirmation under subsection (b) may make an oral affirmation. The voter must make the oral affirmation before the poll clerks of the precinct. After the voter makes an oral affirmation under this subsection, the poll clerks shall:**

**(1) reduce the substance of the affirmation to writing at an appropriate location on the poll list; and**

**(2) initial the affirmation.**

SECTION 48. IC 3-10-12-3.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3.5.** After December 31, 2005, the written affirmation described in ~~section 3~~ **section 3.4** of this chapter must include the person's voter identification number to permit transfer of the registration under IC 3-7-13-13.

SECTION 49. IC 3-10-12-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4.** (a) The written affirmation described in ~~section 3~~ **section 3.4** of this chapter may be executed as follows:

**(1) At the office of the circuit court clerk or the board of county voter registration office for the county of the precinct of the person's former residence, not later than 4 p.m. on the day before the election.**

**(2) Before the inspector of the precinct of the person's former residence, if the application and statement are executed on the day of the election.**

**(3) When the application for an absentee ballot is filed with the county election board of the county of the precinct of the person's former residence.**

**(b) If the person executes the affidavit under this section at the office of the circuit court clerk or board of county voter registration office before the day of the election, the clerk or board office shall furnish a copy of the affirmation to the person. The person shall present the copy to the inspector of the precinct of the person's former residence when the person offers to vote in that precinct under IC 3-11-8.**

**(c) If the person executes the affirmation under this section when filing an application for an absentee ballot, the county election board**

**shall attach the original or a copy of the affirmation to the person's application for an absentee ballot before the application and ballot are delivered to the inspector of the precinct of the person's former residence.**

**(d) If the person executes the affirmation under this section before the inspector of the precinct of the person's former residence on the day of the election, the inspector shall return the original affirmation to the circuit court clerk or board of county election board. The county election board shall forward the affidavit to the county voter registration office after the closing of the polls.**

SECTION 50. IC 3-11-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5.** The nominees of a:

**(1) major political party;**

**(2) political party described by IC 3-8-4-10; or**

**(3) group of petitioners under IC 3-8-6 who are identified by the petition as the nominees of a political party;**

**shall be listed on the ballots under the name and device of the party or petitioners as designated by them in their certificate or petition. or if none is designated, then under some suitable name and device. If the same device for designating candidates is selected by two (2) parties or groups of petitioners, it shall be given to the one (1) party that first selected it; and a suitable filed the device shall be selected for the other party or group of petitioners. under IC 3-8-7-11.**

SECTION 51. IC 3-11-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 11.** The county election board shall deliver the following to each inspector or the inspector's representative:

**(1) The sealed package of paper ballots, provisional ballots, sample ballots, and any other supplies provided for the inspector's precinct by the election division.**

**(2) The local sample ballots, the ballot labels, if any, and all poll lists, registration lists, and other supplies considered necessary to conduct the election in the inspector's precinct.**

**(3) The local ballots printed under the direction of the county election board as follows:**

**(A) In those precincts where ballot card voting systems are to be used, the number of ballots at least equal to one hundred percent (100%) of the number of voters in the inspector's precinct, according to the poll list.**

**(B) In those precincts where voting machines, ballot card systems, or electronic voting systems are to be used, the number of paper ballots that will be required to be printed and furnished to the precincts for emergency purposes only.**

**(C) Provisional ballots in the number considered necessary by the county election board.**

**(4) Twenty (20) ink pens suitable for printing the names of write-in candidates on the ballot or ballot envelope.**

**(5) Copies of the voter's bill of rights for posting as required by 42 U.S.C. 15482.**

**(6) Copies of the instructions for a provisional voter required by 42 U.S.C. 15482. The county election board shall provide at least the number of copies of the instructions as the number of provisional ballots provided under subdivision (3).**

SECTION 52. IC 3-11-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 3.** (a) Before each election each county executive shall secure for each precinct of the county an accessible facility in which to hold the election.

**(b) If an accessible facility is not available within the precinct, then the polls may be located in a public building in an adjoining another precinct in the county if the public building is: polls are:**

**(1) either:**

**(A) not more than one (1) mile five (5) miles from the closest boundary of the precinct for which it is the polls; or**

**(B) located in the same township as the precinct that does not have an accessible facility available; and**

**(2) located in an accessible facility.**

**(c) If the county election board, by a unanimous vote of its entire membership, determines that an accessible facility is not available under subsection (b), the board may locate the polls in the most convenient available accessible facility in the county.**

**(d) If the county election board, by unanimous vote of its entire**

membership, determines that:

- (1) **an accessible facility is not available under subsection (b) or (c); and**
- (2) **the most convenient accessible facility is located in an adjoining county;**

**the board may locate the polls in the facility described in subdivision (2) with the unanimous consent of the entire membership of the county election board of the county in which the facility is located.**

SECTION 53. IC 3-11-8-4.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.3. (a) If the county election board adopts an order by the unanimous vote of the entire membership of the board, the county executive may locate the polls for the precinct at the polls for an adjoining precinct, using the precinct election board of the adjoining precinct.

(b) An order adopted under this section expires December 31 after the date the order was adopted.

(c) **If a precinct election board administers more than one (1) precinct under this section, the board shall keep the ballots cast in each precinct separate from ballots cast in any other precinct, so that the votes cast for each candidate and on each public question in each of the precincts administered by the board may be determined.**

SECTION 54. IC 3-11-8-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. (a) Only the following persons are permitted in the polls during an election:

- (1) Members of a precinct election board.
- (2) Poll clerks and assistant poll clerks.
- (3) Election sheriffs.
- (4) Deputy election commissioners.
- (5) Pollbook holders **and challengers.**
- (6) Watchers.
- (7) Voters for the purposes of voting.
- (8) Minor children accompanying voters as provided under IC 3-11-11-8. ~~and IC 3-11-12-29.~~
- (9) An assistant to a precinct election officer appointed under IC 3-6-6-39.
- (10) An individual authorized to assist a voter in accordance with IC 3-11-9.
- (11) A member of a county election board, acting on behalf of the board.
- (12) A mechanic authorized to act on behalf of a county election board to repair a voting system (if the mechanic bears credentials signed by each member of the board).
- (13) Either of the following who have been issued credentials signed by the members of the county election board:
  - (A) The county chairman of a political party.
  - (B) The county vice chairman of a political party.

**(14) The secretary of state, as chief election officer of the state, unless the individual serving as secretary of state is a candidate for nomination or election to an office at the election.**

(b) This subsection applies to a simulated election for minors conducted with the authorization of the county election board. An individual participating in the simulated election may be in the polls for the purpose of voting. A person supervising the simulated election may be in the polls to perform the supervision.

(c) The inspector of a precinct has authority over all simulated election activities conducted under subsection (b) and shall ensure that the simulated election activities do not interfere with the election conducted in that polling place.

SECTION 55. IC 3-11-8-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. ~~Challengers appointed under IC 3-6-7 are entitled to stand at the sides of the chute next to the entrance to the polls, as provided in IC 3-6-7-2. No other~~ A person may **not** remain within a distance equal to the length of the chute (as defined in IC 3-5-2-10) of the entrance to the polls except for the purpose of offering to vote.

SECTION 56. IC 3-12-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) This chapter:

- (1) is enacted to comply with 42 U.S.C. 15481 by establishing uniform and nondiscriminatory standards to define what will be counted as a vote on a paper ballot; and

(2) applies to each precinct where voting is by paper ballot.

(b) After the polls have closed, each precinct election board shall count the paper ballot votes for each candidate for each office and on each public question. ~~The board shall begin by counting the state paper ballots and shall complete the count of the state paper ballots before counting the local paper ballots.~~ The ballots shall be counted by laying each ballot upon a table in the order in which it is taken from the ballot box.

(c) Notwithstanding subsection (b), the precinct election board may count absentee ballots before the polls have closed. If the precinct election board counts absentee ballots under this subsection, a member of the precinct election board may not, before the polls have closed, provide any person other than a member of the precinct election board with information concerning the number of votes:

- (1) a candidate received for an office; or
- (2) cast to approve or reject a public question;

on absentee ballots counted under this subsection.

**(d) If a precinct election board administers more than one (1) precinct, the board shall keep the ballots cast in each precinct separate from ballots cast in any other precinct, so that the votes cast for each candidate and on each public question in each of the precincts administered by the board may be determined.**

SECTION 57. IC 3-12-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) The return printed by the automatic tabulating machines, along with the return of votes by absentee and provisional voters, constitutes the official return of each precinct. Upon completion of the count, the return is open to the public.

(b) This subsection applies if the votes have been cast on a ballot card voting system that is not designed to allow the counting and tabulation of votes by the precinct election board. The circuit court clerk shall, upon request, furnish to the media in the area the results of the tabulation.

(c) This subsection applies if the votes have been cast on a ballot card voting system that is designed to allow the counting and tabulation of votes by the precinct election board. Upon receiving the certificate for the media prepared under section 2(c) of this chapter, the circuit court clerk shall deliver the certificate to any person designated to receive the certificate by the editors of the newspapers published in the county or by the managers of the radio and television stations operating in the county.

**(d) If a precinct election board administers more than one (1) precinct, the precinct election board or circuit court clerk shall keep the ballots cast in each precinct separate from ballots cast in any other precinct, so that the votes cast for each candidate and on each public question in each of the precincts administered by the board may be determined.**

SECTION 58. IC 3-12-3.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) When paper vote total printouts have been obtained, the precinct election board shall prepare certificates stating the number of votes that each candidate received for each office and the votes on each public question by attaching the paper vote total printouts to certificate forms supplied by the county election board.

(b) Each member of the board shall be given a copy of the certificate.

**(c) If a precinct election board administers more than one (1) precinct, the board shall keep the ballots cast in each precinct separate from ballots cast in any other precinct, so that the votes cast for each candidate and on each public question in each of the precincts administered by the board may be determined.**

SECTION 59. IC 3-12-9-1, AS AMENDED BY HEA 1288-2005, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Whenever a tie vote at an election for:

- (1) a federal office;
- (2) a state office (other than governor and lieutenant governor);
- or**
- (3) a legislative office;
- ~~(4) a circuit office; or~~
- ~~(5) a school board office not covered under IC 20-23-4 or IC 20-23-7;~~

occurs, a special election shall be held.

(b) Whenever a tie vote occurs at a primary election for the nomination of a candidate to be voted for at the general or municipal election, IC 3-13-1-17 applies.

SECTION 60. IC 3-12-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. Whenever a circuit court clerk receives certification that a tie vote at an election for a local office ~~(other than a circuit office)~~ **or a school board office** occurred, the clerk shall immediately send a written notice of the tie vote to:

- (1) the fiscal body of the affected political subdivision; **or**
- (2) **if the tie vote occurred in an election for a circuit office in a circuit that includes more than one county, to the fiscal body of each county of the circuit.**

SECTION 61. IC 3-12-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The fiscal body of a political subdivision that receives notice under section 3 of this chapter shall resolve the tie vote by electing a person to fill the office not later than December 31 following the election ~~(or not later than June 30 following the election of a school board member in May)~~ at which the tie vote occurred. The fiscal body shall select one (1) of the candidates who was involved in the tie vote to fill the office.

(b) **If a tie vote has occurred in an election for a circuit office in a circuit that contains more than one (1) county, the fiscal bodies of the counties shall meet in joint session at the county seat of the county that contains the greatest percentage of population of the circuit to select one (1) of the candidates who was involved in the tie vote in order to fill the office in accordance with this section.**

(c) If a tie vote has occurred for the election of more than one (1) at-large seat on a legislative or fiscal body, the fiscal body shall select the number of individuals necessary to fill each of the at-large seats for which the tie vote occurred. However, a member of a fiscal body who runs for reelection and is involved in a tie vote may not cast a vote under this section.

~~(b)~~ (d) The executive of the political subdivision (other than a town **or a school corporation**) may cast the deciding vote to break a tie vote in a fiscal body acting under this section. The clerk-treasurer of the town may cast the deciding vote to break a tie vote in a town fiscal body acting under this section. **A tie vote in the fiscal body of a school corporation under this section shall be broken under IC 20-4-1-26.5 or IC 20-4-8-8.**

SECTION 62. IC 3-13-1-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.5. **A candidate seeking to fill a candidate vacancy under this chapter must comply with the requirements imposed under IC 3-8-1 for the office.**

SECTION 63. IC 3-13-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) To be eligible to participate in a caucus called under section 7 of this chapter, an elected precinct committeeman must be entitled to vote for the office for which a candidate is to be selected. An elected precinct committeeman is eligible to participate in a caucus called under this chapter, regardless of when the ballot vacancy occurred.

(b) An appointed precinct committeeman is eligible to participate in a caucus called under section 7 of this chapter if the precinct committeeman was a committeeman thirty (30) days before the vacancy occurred.

(c) **For purposes of a candidate vacancy resulting from the failure of a candidate to be nominated at a primary at which precinct committeemen were elected, an appointed precinct committeeman is eligible to serve if the committeeman has been reappointed following the primary in accordance with the rules of the committeeman's political party.**

SECTION 64. IC 3-13-1-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. (a) This section applies to a political party subject to IC 3-8-4-10, **IC 3-10-2-15, or IC 3-10-6-12.**

(b) A candidate vacancy that exists following the convention of the party shall be filled by the state committee of the political party not later than ~~noon June 30 before election day: the date and time specified by section 7(a)(1) of this chapter for a major political party to fill a candidate vacancy.~~ The chairman of the state committee shall file a notice of intent to fill the candidate vacancy

with the official who is required to receive a certificate of candidate selection under section 15 of this chapter. The notice must be filed not later than ten (10) days before the chairman fills the candidate vacancy. The chairman of the state committee shall act in accordance with section 15 of this chapter to certify the candidate selected to fill the vacancy.

(c) This subsection applies to a candidate vacancy resulting from a vacancy on the general election ballot resulting from the failure of the convention to nominate a candidate for an office. The certificate required by subsection (b) shall be filed not later than ~~noon July 3 before election day: the date and time specified by section 15(c) of this chapter for a major political party to file a certificate of candidate selection.~~

(d) This subsection applies to all candidate vacancies not described by subsection (c). **If a candidate vacancy occurs as a result of:**

- (1) **the death of a candidate;**
- (2) **the withdrawal of a candidate;**
- (3) **the disqualification of a candidate under IC 3-8-1-5; or**
- (4) **a court order issued under IC 3-8-7-29(d);**

**the political party may fill the vacancy within the same period of time that a major political party is permitted to fill a candidate vacancy under section 7(b) of this chapter.**

(e) The certificate required by subsection (b) shall be filed ~~not more than three (3) days (excluding Saturdays and Sundays) within the period of time required under section 15(d) of this chapter for a major political party to file the certificate after selection of the candidates.~~

SECTION 65. IC 3-13-2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1.5. **A candidate seeking to fill a candidate vacancy under this chapter must comply with the requirements imposed under IC 3-8-1 for the office.**

SECTION 66. IC 3-14-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) This section applies during an election whenever a voter makes an affidavit before the inspector in a precinct that a person who has voted is an illegal voter in the precinct. **This section does not apply to an affidavit executed by an individual who:**

- (1) **is subject to the requirements set forth in IC 3-7-33-4.5;**
- (2) **is challenged solely as a result of the individual's inability or refusal to comply with IC 3-7-33-4.5; and**
- (3) **subsequently complies with IC 3-7-33-4.5 before the close of the polls on election day.**

(b) Immediately after the close of the polls the inspector shall deliver the affidavit to the **county election board for delivery by the prosecuting attorney for the county who to the grand jury under section 2 of this chapter. The prosecuting attorney for the county shall:**

- (1) proceed as if the affidavit had been made before the prosecuting attorney; and
- (2) ~~notify~~ **ensure that the grand jury notifies** the NVRA official **under section 2 of this chapter** if a violation of NVRA appears to have occurred.

SECTION 67. IC 3-14-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Each precinct election board shall, at the close of the polls, place all affidavits prescribed by this title for use on election day to determine the eligibility of a precinct election officer (or a person who wishes to cast a ballot) in a strong paper bag or envelope and securely seal it. Each member shall endorse that member's name on the back of the bag or envelope.

(b) The inspector and judge of the opposite political party shall deliver the sealed bag or envelope to the county election board. ~~whose duty it is to~~ **The county election board shall do the following:**

- (1) **Remove the affidavits from the bag or envelope.**
- (2) **Mail a copy of each affidavit to the secretary of state.**
- (3) **Replace the affidavits within the bag or envelope.**
- (4) **Reseal the bag or envelope with the endorsement of the name of each county election board member on the back of the bag or envelope.**
- (5) **Carefully preserve it the resealed bag or envelope and deliver it, with the county election board's seal unbroken, to**

the foreman of the grand jury when next in session.

(c) The grand jury shall inquire into the truth or falsity of the affidavits, and the court having jurisdiction over the grand jury shall specially charge the jury as to its duties under this section.

(d) The grand jury shall file a report of the result of its inquiry with:

- (1) the court; and
- (2) the NVRA official if a violation of NVRA appears to have occurred.

SECTION 68. IC 9-13-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. Except as otherwise provided in this title, a reference in this title to a federal statute or regulation relating to the National Voter Registration Act of 1993 (42 U.S.C. 1973gg) is a reference to the statute or regulation as in effect January 1, ~~2000~~ 2005.

SECTION 69. IC 12-7-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. Except as otherwise provided in this title, a reference in this title to a federal statute or regulation relating to the federal National Voter Registration Act of 1993 (42 U.S.C. 1973gg) is a reference to the statute or regulation as in effect January 1, ~~2000~~ 2005.

SECTION 70. IC 16-18-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. Except as otherwise provided in this title, a reference in this title to a federal statute or regulation relating to the federal National Voter Registration Act of 1993 (42 U.S.C. 1973gg) is a reference to the statute or regulation as in effect January 1, ~~2000~~ 2005.

SECTION 71. IC 20-3-21-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The six (6) members who are elected for a position on the governing body described under section 3(b)(1) of this chapter are determined as follows:

(1) Each candidate must file a nomination petition with the ~~clerk of the circuit court at least board of elections and registration not earlier than one hundred four (104) days and not later than noon~~ seventy-four (74) days before the election at which the members are to be elected and that includes the following information:

- (A) The name of the candidate.
- (B) The district in which the candidate resides.
- (C) The signatures of at least one hundred (100) registered voters residing within the school corporation.
- (D) The fact that the candidate is running for a district position.
- (E) A certification that the candidate meets the qualifications for candidacy imposed by this chapter.

(2) Only eligible voters residing in the district may vote for a candidate.

(3) The candidate within each particular district who receives the greatest number of votes within the district is elected.

(b) The member who is elected for a position on the governing body described under section 3(b)(2) of this chapter is determined as follows:

(1) Each candidate must file a nomination petition with the clerk of the circuit court at least seventy-four (74) days before the election at which the at-large member is to be elected. The petition must include the following information:

- (A) The name of the candidate.
- (B) The signatures of at least one hundred (100) registered voters residing within the school corporation.
- (C) The fact that the candidate is running for the at-large position on the governing body.
- (D) A certification that the candidate meets the qualifications for candidacy imposed by this chapter.

(2) Only eligible voters residing in the school corporation may vote for a candidate.

(3) The candidate who:

- (A) runs for the at-large position on the governing body; and
  - (B) receives the greatest number of votes within the school corporation;
- is elected to the at-large position.

SECTION 72. IC 20-3-21-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. The members shall

be elected as follows:

(1) Three (3) of the members elected under section 3(b)(1) of this chapter shall be elected at the primary election to be held in ~~2000~~ 2008 and every four (4) years thereafter.

(2) Three (3) of the members elected under section 3(b)(1) of this chapter shall be elected at the primary election to be held in ~~2002~~ 2006 and every four (4) years thereafter.

(3) The at-large member elected under section 3(b)(2) of this chapter shall be elected at the primary election to be held in ~~2004~~ 2008 and every four (4) years thereafter.

SECTION 73. IC 20-3-22-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. To be eligible to be a candidate for the governing body under this chapter, the following apply:

(1) Each prospective candidate must file a nomination petition with the ~~clerk of the circuit court at least board of elections and registration not earlier than one hundred four (104) days and not later than noon~~ seventy-four (74) days before the primary election at which the members are to be elected that includes the following information:

- (A) The name of the prospective candidate.
- (B) Whether the prospective candidate is a district candidate or an at-large candidate.
- (C) A certification that the candidate meets the qualifications for candidacy imposed under this chapter.
- (D) The signatures of at least one hundred (100) registered voters residing within the school corporation.

(2) Each prospective candidate for a district position must:

- (A) reside within the district; and
- (B) have resided within the district for at least the three (3) years immediately preceding the election.

(3) Each prospective candidate for an at-large position must:

- (A) reside within the boundaries of the school corporation; and
- (B) have resided within the boundaries of the school corporation for at least the three (3) years immediately preceding the election.

(4) Each prospective candidate (regardless of whether the candidate is a district candidate or an at-large candidate) must:

- (A) be a registered voter and must have been a registered voter for at least the three (3) years immediately preceding the election; and
- (B) be a high school graduate or have received a:
  - (i) high school equivalency certificate; or
  - (ii) state of Indiana general educational development (GED) diploma under IC 20-10.1-12.1.

(5) A prospective candidate may not:

- (A) hold any other elective or appointive office; or
  - (B) have a pecuniary interest in any contract with the school corporation or its governing body;
- as prohibited by law.

SECTION 74. IC 20-3-22-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. The members shall be elected as follows:

(1) Three (3) of the members shall be elected at the primary election to be held in ~~2000~~ 2008 and every four (4) years thereafter.

(2) Two (2) of the members shall be elected at the primary election to be held in ~~2002~~ 2006 and every four (4) years thereafter.

SECTION 75. IC 20-4-1-26.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 26.5. (a) This section applies to each school corporation, whenever created.

(b) If the board of school trustees is to be elected at the primary election, each registered voter may vote in the board of school trustee election without otherwise voting in the primary election.

(c) If a tie vote occurs among any of the candidates, the ~~judge of the circuit court, or in case of a united school corporation, the judge of the circuit court of the county having the most pupils enrolled in the united school corporation; shall select one (1) of the candidates who shall be declared and certified elected; tie vote shall be resolved under IC 3-12-9-4.~~

(d) If after the first board of school trustees takes office, there is a

vacancy on the board of school trustees for any reason, including the failure of the sufficient number of petitions for candidates being filed, and whether the vacating member was elected or appointed, the remaining members of the board of school trustees, whether or not a majority of the board, shall by a majority vote fill the vacancy by appointing a person from within the boundaries of the community school corporation, with the residence and other qualifications provided for a regularly elected or appointed board member filling the office, to serve for the term or balance of terms respectively. If a tie vote occurs among the ~~remaining~~ members of the board **under this subsection or IC 3-12-9-4**, or the board fails to act within thirty (30) days after any vacancy occurs, the judge of the circuit court in the county where the majority of registered voters of the school corporation reside shall make the appointment.

(e) A vacancy in the board of trustees occurs if a member ceases to be a resident of any community school corporation. A vacancy does not occur when the member moves from a district of the school corporation from which the member was elected or appointed as long as the member continues to be a resident of the school corporation.

(f) At the first primary or general election in which members of the board of school trustees are elected, a simple majority of the candidates elected as members of the board of school trustees who receive the highest number of votes shall be elected for four (4) year terms. The balance of the candidates elected as members of the board of school trustees receiving the next highest number of votes shall be elected for two (2) year terms. Thereafter, all school board members shall be elected for four (4) year terms.

(g) Board members elected in November take office and assume their duties on January 1 or July 1 after their election, as determined by the board of school trustees before the election. Board members elected in May take office and assume their duties on July 1 after their election.

SECTION 76. IC 20-4-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) In a community school corporation set up under IC 20-4-1 that has a population of more than seventy-five thousand (75,000) but less than ninety thousand (90,000), and that is the successor in interest to a school city having the same population, the governing body shall consist of a board of trustees of five (5) members elected in the manner provided in this chapter.

(b) At the ~~2000~~ **2008** primary election and at each primary election every four (4) years thereafter, there shall be elected in each school corporation covered by this chapter two (2) school trustees each of whom shall serve for four (4) years. The two (2) candidates for the office of school trustee receiving the highest number of votes at the election take office on July 1 next following the election.

(c) At the ~~2002~~ **2006** primary election and at each primary election every four (4) years thereafter, there shall be elected in each school city covered by this chapter three (3) school trustees each of whom shall serve for four (4) years. The three (3) candidates for the office of school trustee receiving the highest number of votes at the election take office on July 1 next following the election.

(d) The school trustees shall be elected at the times provided and shall succeed the retiring members in the order and manner as set forth in this section.

SECTION 77. IC 20-4-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) At the time provided by IC 3-8-2-4 for filing a declaration of candidacy for the primary election next following the creation of the county school corporation as provided in this chapter, nominations for members of the board of education of said county school corporation shall be made by a petition signed by the nominee and ten (10) voters of the county residing in the same board member district as the nominee, which shall be filed with the clerk of the circuit court in the respective county. Such nominations shall be listed by board member districts on the primary election ballot as prescribed by IC 3-10-1-19, but without party designation.

(b) Voting and tabulation of votes shall be conducted in the same manner as in primary elections under IC 3-10-1. The candidates elected from each board member district and at large shall be the persons having the greatest number of votes. If in the first election more than two (2) candidates in any one (1) board member district shall be among those who received the greatest number of votes or if

in any subsequent election more than one (1) person shall be among those who received the greatest number of votes, then the candidate or candidates respectively receiving the next greatest number of votes in other board member districts respectively shall be declared elected. ~~In the event of~~ **If a tie vote occurs among any of the candidates, the tie vote shall be resolved under IC 3-12-9-4.** If a tie vote for any of said candidates, occurs when the fiscal body acts under IC 3-12-9-4, the judge of the circuit court shall select one (1) of said candidates who shall be declared and certified elected.

(c) If at any time there shall occur a vacancy or vacancies on the board for any reason including the failure of the sufficient number of petitions for candidates being filed, it shall be the duty of the judge of the circuit court to fill said vacancies by appointing a person or persons from the respective board member district or districts to serve for the term or balance of terms respectively.

(d) At the first primary election wherein members of the county board of education shall be elected, the three (3) candidates who receive the highest number of votes in each of the respective board member districts shall be elected for four (4) year terms and the two (2) candidates from different districts receiving the next highest number of votes respectively shall be elected for two (2) year terms. All candidates for membership on the county board of education shall be voted upon by the voters in the county school corporation district only and shall be elected for four (4) year terms after the first election and shall take office and assume their duties one (1) week after their election.

SECTION 78. IC 20-23-4-30, AS ADDED BY HEA 1288-2005, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 30. (a) This section applies to each school corporation.

(b) If the governing body is to be elected at the primary election, each registered voter may vote in the governing body election without otherwise voting in the primary election.

(c) If a tie vote occurs among any of the candidates,

~~(1) the judge of the circuit court; or~~

~~(2) in case of a united school corporation, the judge of the circuit court of the county having the most students enrolled in the united school corporation;~~

~~shall select one (1) of the candidates, who shall be declared and certified elected; the tie vote shall be resolved under IC 3-12-9-4.~~

(d) If after the first governing body takes office, there is a vacancy on the governing body for any reason, including the failure of the sufficient number of petitions for candidates being filed, whether the vacating member was elected or appointed, the remaining members of the governing body, whether or not a majority of the governing body, shall by a majority vote fill the vacancy by appointing a person from within the boundaries of the community school corporation to serve for the term or balance of the term. An individual appointed under this subsection must possess the qualifications provided for a regularly elected or appointed governing body member filling the office. If:

(1) a tie vote occurs among the ~~remaining~~ members of the governing body **under this subsection or IC 3-12-9-4**; or

(2) the governing body fails to act within thirty (30) days after any vacancy occurs;

the judge of the circuit court in the county where the majority of registered voters of the school corporation reside shall make the appointment.

(e) A vacancy in the governing body occurs if a member ceases to be a resident of any community school corporation. A vacancy does not occur when the member moves from a district of the school corporation from which the member was elected or appointed if the member continues to be a resident of the school corporation.

(f) At the first primary or general election in which members of the governing body are elected:

(1) a simple majority of the candidates elected as members of the governing body who receive the highest number of votes shall be elected for four (4) year terms; and

(2) the balance of the candidates elected as members of the governing body receiving the next highest number of votes shall be elected for two (2) year terms.

Thereafter, all school board members shall be elected for four (4) year terms.

(g) Governing body members elected:



- (1) in November take office and assume their duties on January 1 or July 1 after their election, as determined by the board of school trustees before the election; and
- (2) in May take office and assume their duties on July 1 after their election.

SECTION 79. IC 20-23-12-5, AS ADDED BY HEA 1288-2005, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The six (6) members who are elected for a position on the governing body described under section 3(b) of this chapter are determined as follows:

- (1) Each prospective candidate must file a nomination petition with the ~~clerk of the circuit court at least~~ **board of elections and registration not earlier than one hundred four (104) days and not later than noon** seventy-four (74) days before the election at which the members are to be elected that includes the following information:

- (A) The name of the prospective candidate.
- (B) The district in which the prospective candidate resides.
- (C) The signatures of at least one hundred (100) registered voters residing in the school corporation.
- (D) The fact that the prospective candidate is running for a district position.
- (E) A certification that the prospective candidate meets the qualifications for candidacy imposed by this chapter.

SECTION 80. IC 20-23-13-1, AS ADDED BY HEA 1288-2005, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) In a community school corporation established under IC 20-23-4 that:

- (1) has a population of more than seventy-five thousand (75,000) but less than ninety thousand (90,000); and
- (2) is the successor in interest to a school city having the same population;

the governing body consists of a board of trustees of five (5) members elected in the manner provided in this chapter.

(b) At the ~~2004~~ **2008** primary election and at each primary election every four (4) years thereafter, there shall be elected in each school corporation covered by this chapter two (2) governing body members, each of whom shall serve for four (4) years. The two (2) candidates for the office of school trustee receiving the highest number of votes at the election take office on July 1 next following the election.

(c) At the ~~2002~~ **2006** primary election and at each primary election every four (4) years thereafter, there shall be elected in each school city covered by this chapter three (3) governing body members, each of whom shall serve for four (4) years. The three (3) candidates for the office of school trustee receiving the highest number of votes at the election take office on July 1 next following the election.

(d) The governing body members shall be elected at the times provided and shall succeed the retiring members in the order and manner as set forth in this section.

SECTION 81. IC 20-23-14-5, AS ADDED BY HEA 1288-2005, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. To be eligible to be a candidate for the governing body under this chapter, the following apply:

- (1) Each prospective candidate must file a nomination petition with the ~~clerk of the circuit court at least~~ **board of elections and registration not earlier than one hundred four (104) days and not later than noon** seventy-four (74) days before the primary election at which the members are to be elected that includes the following information:

- (A) The name of the prospective candidate.
- (B) Whether the prospective candidate is a district candidate or an at-large candidate.
- (C) A certification that the prospective candidate meets the qualifications for candidacy imposed under this chapter.
- (D) The signatures of at least one hundred (100) registered voters residing in the school corporation.

- (2) Each prospective candidate for a district position must:

- (A) reside in the district; and
- (B) have resided in the district for at least the three (3) years immediately preceding the election.

- (3) Each prospective candidate for an at-large position must:

- (A) reside in the school corporation; and
- (B) have resided in the school corporation for at least the

three (3) years immediately preceding the election.

- (4) Each prospective candidate (regardless of whether the candidate is a district candidate or an at-large candidate) must:

- (A) be a registered voter;
- (B) have been a registered voter for at least the three (3) years immediately preceding the election; and
- (C) be a high school graduate or have received a:

- (i) high school equivalency certificate; or
- (ii) state general educational development (GED) diploma under IC 20-20-6.

- (5) A prospective candidate may not:

- (A) hold any other elective or appointive office; or
  - (B) have a pecuniary interest in any contract with the school corporation or its governing body;
- as prohibited by law.

SECTION 82. IC 36-2-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) This subsection does not apply to a county having a population of:

- (1) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); or
- (2) more than two hundred thousand (200,000) but less than three hundred thousand (300,000).

The executive shall divide the county into three (3) districts that are composed of contiguous territory and are reasonably compact. The district boundaries drawn by the executive must not cross precinct boundary lines and must divide townships only when a division is clearly necessary to accomplish redistricting under this section. If necessary, the county auditor shall call a special meeting of the executive to establish or revise districts.

(b) This subsection applies to a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000). A county redistricting commission shall divide the county into three (3) single-member districts that comply with subsection (d). The commission is composed of:

- (1) the members of the Indiana election commission;
- (2) two (2) members of the senate selected by the president pro tempore, one (1) from each political party; and
- (3) two (2) members of the house of representatives selected by the speaker, one (1) from each political party.

The legislative members of the commission have no vote and may act only in an advisory capacity. A majority vote of the voting members is required for the commission to take action. The commission may meet as frequently as necessary to perform its duty under this subsection. The commission's members serve without additional compensation above that provided for them as members of the Indiana election commission, the senate, or the house of representatives.

(c) This subsection applies to a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000). The executive shall divide the county into three (3) single-member districts that comply with subsection (d).

(d) Single-member districts established under subsection (b) or (c) must:

- (1) be compact, subject only to natural boundary lines (such as railroads, major highways, rivers, creeks, parks, and major industrial complexes);
- (2) contain, as nearly as is possible, equal population; and
- (3) not cross precinct lines.

- (e) A division under subsection (a), (b), or (c) shall be made:

- (1) ~~in 2001 and every ten (10) years after that; during the first year after a year in which a federal decennial census is conducted; and~~
- (2) when the county adopts an order declaring a county boundary to be changed under IC 36-2-1-2.

(f) A division under subsection (a), (b), or (c) may be made in any odd-numbered year not described in subsection (e).

SECTION 83. IC 36-2-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) This subsection does not apply to a county having a population of:

- (1) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); or
- (2) more than two hundred thousand (200,000) but less than three hundred thousand (300,000).



The county executive shall, by ordinance, divide the county into four (4) contiguous, single-member districts that comply with subsection (d). If necessary, the county auditor shall call a special meeting of the executive to establish or revise districts. One (1) member of the fiscal body shall be elected by the voters of each of the four (4) districts. Three (3) at-large members of the fiscal body shall be elected by the voters of the whole county.

(b) This subsection applies to a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000). The county redistricting commission established under IC 36-2-2-4 shall divide the county into seven (7) single-member districts that comply with subsection (d). One (1) member of the fiscal body shall be elected by the voters of each of these seven (7) single-member districts.

(c) This subsection applies to a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000). The fiscal body shall divide the county into nine (9) single-member districts that comply with subsection (d). Three (3) of these districts must be contained within each of the three (3) districts established under IC 36-2-2-4(c). One (1) member of the fiscal body shall be elected by the voters of each of these nine (9) single-member districts.

(d) Single-member districts established under subsection (a), (b), or (c) must:

- (1) be compact, subject only to natural boundary lines (such as railroads, major highways, rivers, creeks, parks, and major industrial complexes);
- (2) not cross precinct boundary lines;
- (3) contain, as nearly as possible, equal population; and
- (4) include whole townships, except when a division is clearly necessary to accomplish redistricting under this section.

(e) A division under subsection (a), (b), or (c) shall be made:

- (1) ~~in 2001 and every ten (10) years after that; during the first year after a year in which a federal decennial census is conducted;~~ and
- (2) when the county executive adopts an order declaring a county boundary to be changed under IC 36-2-1-2.

(f) A division under subsection (a), (b), or (c) may be made in any odd-numbered year not described in subsection (e).

SECTION 84. IC 36-3-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The city-county legislative body shall, by ordinance, divide the whole county into twenty-five (25) districts that:

- (1) are compact, subject only to natural boundary lines (such as railroads, major highways, rivers, creeks, parks, and major industrial complexes);
- (2) contain, as nearly as is possible, equal population; and
- (3) do not cross precinct boundary lines.

This division shall be made ~~in 1992 and every ten (10) years after that; during the second year after a year in which a federal decennial census is conducted~~ and may also be made at any other time, subject to IC 3-11-1.5-32.

(b) The legislative body is composed of twenty-five (25) members elected from the districts established under subsection (a) and four (4) members elected from an at-large district containing the whole county.

(c) Each voter of the county may vote for four (4) candidates for at-large membership and one (1) candidate from the district in which the voter resides. The four (4) at-large candidates receiving the most votes from the whole county and the district candidates receiving the most votes from their respective districts are elected to the legislative body.

(d) If the legislative body fails to make the division before the date prescribed by subsection (a) or the division is alleged to violate subsection (a) or other law, a taxpayer or registered voter of the county may petition the superior court of the county to hear and determine the matter. There may not be a change of venue from the court or from the county. The court sitting en banc may appoint a master to assist in its determination and may draw proper district boundaries if necessary. An appeal from the court's judgment must be taken within thirty (30) days, directly to the supreme court, in the same manner as appeals from other actions.

(e) An election of the legislative body held under the ordinance or

court judgment determining districts that is in effect on the date of the election is valid, regardless of whether the ordinance or judgment is later determined to be invalid.

SECTION 85. IC 36-4-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) This section applies only to second class cities.

(b) The legislative body shall adopt an ordinance to divide the city into six (6) districts that:

- (1) are composed of contiguous territory, except for territory that is not contiguous to any other part of the city;
- (2) are reasonably compact;
- (3) do not cross precinct boundary lines, except as provided in subsection (c) or (d); and
- (4) contain, as nearly as is possible, equal population.

(c) The boundary of a city legislative body district may cross a precinct boundary line if:

- (1) more than one (1) member of the legislative body elected from the districts established under subsection (b) resides in one (1) precinct established under IC 3-11-1.5 after the most recent municipal election; and
- (2) following the establishment of a legislative body district whose boundary crosses a precinct boundary line, not more than one (1) member of the legislative body elected from districts resides within the same city legislative body district.

(d) The boundary of a city legislative body district may cross a precinct line if the districts would not otherwise contain, as nearly as is possible, equal population.

(e) A city legislative body district with a boundary described by subsection (c) or (d) may not cross a census block boundary line: **except:**

- (1) **except** when following a precinct boundary line; or
- (2) **unless** the city legislative body certifies in the ordinance that the census block has no population, and is not likely to ever have population.

(f) The legislative body may not adopt an ordinance dividing the city into districts with boundaries described by subsection (c) or (d) unless the clerk of the city mails a written notice to the circuit court clerk. The notice must:

- (1) state that the legislative body is considering the adoption of an ordinance described by this subsection; and
- (2) be mailed not later than ten (10) days before the legislative body adopts the ordinance.

(g) The division under subsection (b) shall be made: ~~in 2002; every ten (10) years after that;~~

- (1) **during the second year after a year in which a federal decennial census is conducted;** and
- (2) when required to assign annexed territory to a district.

This division may be made at any other time, subject to IC 3-11-1.5-32.

(h) The legislative body is composed of six (6) members elected from the districts established under subsection (b) and three (3) at-large members.

(i) Each voter of the city may vote for three (3) candidates for at-large membership and one (1) candidate from the district in which the voter resides. The three (3) at-large candidates receiving the most votes from the whole city and the district candidates receiving the most votes from their respective districts are elected to the legislative body.

(j) If any territory in the city is not included in one (1) of the districts established under this section, the territory is included in the district that:

- (1) is contiguous to that territory; and
- (2) contains the least population of all districts contiguous to that territory.

(k) If any territory in the city is included in more than one (1) of the districts established under this section, the territory is included in the district that:

- (1) is one (1) of the districts in which the territory is described in the ordinance adopted under this section;
- (2) is contiguous to that territory; and
- (3) contains the least population of all districts contiguous to that territory.

(l) A copy of the ordinance establishing districts under this section

must be filed with the circuit court clerk of the county that contains the greatest population of the city not later than thirty (30) days after the ordinance is adopted.

SECTION 86. IC 36-4-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) This section applies to third class cities, except as provided by section 5 of this chapter.

(b) This subsection does not apply to a city with an ordinance described by subsection (j). The legislative body shall adopt an ordinance to divide the city into five (5) districts that:

- (1) are composed of contiguous territory, except for territory that is not contiguous to any other part of the city;
- (2) are reasonably compact;
- (3) do not cross precinct boundary lines except as provided in subsection (c) or (d); and
- (4) contain, as nearly as is possible, equal population.

(c) The boundary of a city legislative body district may cross a precinct boundary line if:

- (1) more than one (1) member of the legislative body elected from the districts established under subsection (b) or (j) resides in one (1) precinct established under IC 3-11-1.5 after the most recent municipal election; and
- (2) following the establishment of a legislative body district whose boundary crosses a precinct boundary line, not more than one (1) member of the legislative body elected from the districts resides within the same city legislative body district.

(d) The boundary of a city legislative body district may cross a precinct line if the districts would not otherwise contain, as nearly as is possible, equal population.

(e) A city legislative body district with a boundary described by subsection (c) or (d) may not cross a census block boundary line: **except:**

- (1) **except** when following a precinct boundary line; or
- (2) **unless** the city legislative body certifies in the ordinance that the census block has no population, and is not likely to ever have population.

(f) The legislative body may not adopt an ordinance dividing the city into districts with boundaries described by subsection (c) or (d) unless the clerk of the city mails a written notice to the circuit court clerk. The notice must:

- (1) state that the legislative body is considering the adoption of an ordinance described by this subsection; and
- (2) be mailed not later than ten (10) days before the legislative body adopts the ordinance.

(g) The division under subsection (b) or (j) shall be made: ~~in 2002, every ten (10) years after that;~~

- (1) **during the second year after a year in which a federal decennial census is conducted;** and
- (2) when required to assign annexed territory to a district.

This division may be made at any other time, subject to IC 3-11-1.5-32.

(h) This subsection does not apply to a city with an ordinance described by subsection (j). The legislative body is composed of five (5) members elected from the districts established under subsection (b) and two (2) at-large members.

(i) This subsection does not apply to a city with an ordinance described by subsection (j). Each voter of the city may vote for two (2) candidates for at-large membership and one (1) candidate from the district in which the voter resides. The two (2) at-large candidates receiving the most votes from the whole city and the district candidates receiving the most votes from their respective districts are elected to the legislative body.

(j) A city may adopt an ordinance under this subsection to divide the city into four (4) districts that:

- (1) are composed of contiguous territory;
- (2) are reasonably compact;
- (3) do not cross precinct boundary lines, except as provided in subsection (c) or (d); and
- (4) contain, as nearly as is possible, equal population.

(k) This subsection applies to a city with an ordinance described by subsection (j). The legislative body is composed of four (4) members elected from the districts established under subsection (j) and three (3) at-large members.

(l) This subsection applies to a city with an ordinance described by subsection (j). Each voter of the city may vote for three (3) candidates for at-large membership and one (1) candidate from the district in which the voter resides. The three (3) at-large candidates receiving the most votes from the whole city and the district candidates receiving the most votes from their respective districts are elected to the legislative body.

(m) A copy of the ordinance establishing districts under this section must be filed with the circuit court clerk of the county that contains the greatest population of the city no later than thirty (30) days after the ordinance is adopted.

(n) If any territory in the city is not included in one (1) of the districts established under this section, the territory is included in the district that:

- (1) is contiguous to that territory; and
- (2) contains the least population of all districts contiguous to that territory.

(o) If any territory in the city is included in more than one (1) of the districts established under this section, the territory is included in the district that:

- (1) is one (1) of the districts in which the territory is described in the ordinance adopted under this section;
- (2) is contiguous to that territory; and
- (3) contains the least population of all districts contiguous to that territory.

SECTION 87. IC 36-4-6-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) This section applies to third class cities having a population of less than ten thousand (10,000). The legislative body of such a city may, by ordinance adopted before September 1, 1982, decide to be governed by this section instead of section 4 of this chapter. If this ordinance is repealed after August 31, 1982, except as a part of a codification of ordinances that reenacts the ordinance under IC 36-1-5-6, then section 4 of this chapter again applies to the city. The clerk of the legislative body shall send a certified copy of any ordinance adopted under this subsection to the secretary of the county election board.

(b) This subsection does not apply to a city with an ordinance described by subsection (j). The legislative body shall adopt an ordinance to divide the city into four (4) districts that:

- (1) are composed of contiguous territory, except for territory that is not contiguous to any other part of the city;
- (2) are reasonably compact;
- (3) do not cross precinct boundary lines except as provided in subsection (c) or (d); and
- (4) contain, as nearly as is possible, equal population.

(c) The boundary of a city legislative body district may cross a precinct boundary line if:

- (1) more than one (1) member of the legislative body elected from the districts established under subsection (b) or (j) resides in one (1) precinct established under IC 3-11-1.5 after the most recent municipal election; and
- (2) following the establishment of a legislative body district whose boundary crosses a precinct boundary line, not more than one (1) member of the legislative body elected from the districts resides within the same city legislative body district.

(d) The boundary of a city legislative body district may cross a precinct line if the districts would not otherwise contain, as nearly as is possible, equal population.

(e) A city legislative body district with a boundary described by subsection (c) or (d) may not cross a census block boundary line: **except:**

- (1) **except** when following a precinct boundary line; or
- (2) **unless** the city legislative body certifies in the ordinance that the census block has no population, and is not likely to ever have population.

(f) The legislative body may not adopt an ordinance dividing the city into districts with boundaries described by subsection (c) or (d) unless the clerk of the city mails a written notice to the circuit court clerk. The notice must:

- (1) state that the legislative body is considering the adoption of an ordinance described by this subsection; and
- (2) be mailed not later than ten (10) days before the legislative body adopts the ordinance.

(g) The division under subsection (b) or (j) shall be made: ~~in 2002, every ten (10) years after that;~~

**(1) during the second year after a year in which a federal decennial census is conducted; and**

**(2) when required to assign annexed territory to a district.**

This division may be made at any other time, subject to IC 3-11-1.5-32.

(h) This subsection does not apply to a city with an ordinance described by subsection (j). The legislative body is composed of four (4) members elected from the districts established under subsection (b) and one (1) at-large member.

(i) This subsection does not apply to a city with an ordinance described by subsection (j). Each voter may vote for one (1) candidate for at-large membership and one (1) candidate from the district in which the voter resides. The at-large candidate receiving the most votes from the whole city and the district candidates receiving the most votes from their respective districts are elected to the legislative body.

(j) A city may adopt an ordinance under this subsection to divide the city into three (3) districts that:

- (1) are composed of contiguous territory, except for territory that is not contiguous to any other part of the city;
- (2) are reasonably compact;
- (3) do not cross precinct boundary lines, except as provided in subsection (c) or (d); and
- (4) contain, as nearly as is possible, equal population.

(k) This subsection applies to a city with an ordinance described by subsection (j). The legislative body is composed of three (3) members elected from the districts established under subsection (j) and two (2) at-large members.

(l) This subsection applies to a city with an ordinance described by subsection (j). Each voter of the city may vote for two (2) candidates for at-large membership and one (1) candidate from the district in which the voter resides. The two (2) at-large candidates receiving the most votes from the whole city and the district candidates receiving the most votes from their respective districts are elected to the legislative body.

(m) This subsection applies to a city having a population of less than seven thousand (7,000). A legislative body of such a city that has, by resolution adopted before May 7, 1991, decided to continue an election process that permits each voter of the city to vote for one (1) candidate at large and one (1) candidate from each of its four (4) council districts may hold elections using that voting arrangement. The at-large candidate and the candidate from each district receiving the most votes from the whole city are elected to the legislative body. The districts established in cities adopting such a resolution may cross precinct boundary lines.

(n) A copy of the ordinance establishing districts under this section must be filed with the circuit court clerk of the county that contains the greatest population of the city not later than thirty (30) days after the ordinance is adopted.

(o) If any territory in the city is not included in one (1) of the districts established under this section, the territory is included in the district that:

- (1) is contiguous to that territory; and
- (2) contains the least population of all districts contiguous to that territory.

(p) If any territory in the city is included in more than one (1) of the districts established under this section, the territory is included in the district that:

- (1) is one (1) of the districts in which the territory is described in the ordinance adopted under this section;
- (2) is contiguous to that territory; and
- (3) contains the least population of all districts contiguous to that territory.

SECTION 88. IC 36-5-2-4.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.1. (a) The legislative body may, by ordinance, divide the town into districts for the purpose of conducting elections of town officers.

(b) A town legislative body district must comply with the following standards:

- (1) The district must be composed of contiguous territory, except for territory that is not contiguous to any other part of the

town.

(2) The district must be reasonably compact.

(3) The district must contain, as nearly as is possible, equal population.

(4) The district may not cross a census block boundary except when following a precinct boundary line or ~~when~~ **unless** the ordinance specifies that the census block has no population and is not likely to ever have population.

(5) The district may not cross precinct lines, except as provided in subsection (c).

(c) The boundary of a town legislative body district established under subsection (a) may cross a precinct boundary line if:

(1) the legislative body provides by ordinance under section 5 of this chapter that all legislative body members are to be elected at large by the voters of the whole town; or

(2) the district would not otherwise contain, as nearly as is possible, equal population.

(d) If any territory in the town is not included in one (1) of the districts established under this section, the territory is included in the district that:

- (1) is contiguous to that territory; and
- (2) contains the least population of all districts contiguous to that territory.

(e) If any territory in the town is included in more than one (1) of the districts established under this section, the territory is included in the district that:

- (1) is one (1) of the districts in which the territory is described in the ordinance adopted under this section;
- (2) is contiguous to that territory; and
- (3) contains the least population of all districts contiguous to that territory.

(f) The ordinance may be appealed in the manner prescribed by IC 34-13-6. If the town is located in two (2) or more counties, the appeal may be filed in the circuit or superior court of any of those counties.

(g) This subsection does not apply to a town with an ordinance described by subsection (h). The division permitted by subsection (a) shall be made: ~~in 2002, every ten (10) years after that;~~

**(1) during the second year after a year in which a federal decennial census is conducted,** subject to IC 3-11-1.5-32; and

**(2) when required to assign annexed territory to a municipal legislative body district.**

The division may also be made in any other year.

(h) This subsection applies to a town having a population of less than three thousand five hundred (3,500). The town legislative body may adopt an ordinance providing that:

- (1) town legislative body districts are abolished; and
- (2) all members of the legislative body are elected at large.

(i) An ordinance described by subsection (h):

- (1) may not be adopted or repealed during a year in which a municipal election is scheduled to be conducted in the town under IC 3-10-6 or IC 3-10-7; and
- (2) is effective upon passage.

(j) A copy of the ordinance establishing districts under this section must be filed with the circuit court clerk of the county that contains the greatest population of the town not later than thirty (30) days after the ordinance is adopted.

SECTION 89. IC 36-6-6-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.5. (a) This section applies to townships in a county containing a consolidated city.

(b) The legislative body shall adopt a resolution that divides the township into legislative body districts that:

- (1) are composed of contiguous territory;
- (2) are reasonably compact;
- (3) respect, as nearly as reasonably practicable, precinct boundary lines; and
- (4) contain, as nearly as reasonably practicable, equal population.

(c) Before a legislative body may adopt a resolution that divides a township into legislative body districts, the secretary of the legislative body shall mail a written notice to the circuit court clerk. This notice must:

- (1) state that the legislative body is considering the adoption of

a resolution to divide the township into legislative body districts; and

(2) be mailed not later than ten (10) days before the legislative body adopts the resolution.

(d) The legislative body shall make a division into legislative body districts at the following times:

~~(1) In 2001;~~

~~(2) Every ten (10) years after 2002;~~

**(1) During the second year after a year in which a federal decennial census is conducted.**

~~(2)~~ **(2)** Subject to IC 3-11-1.5-32.5, whenever the boundary of the township changes.

(e) The legislative body may make the division under this section at any time, subject to IC 3-11-1.5-32.5.

**SECTION 90. [EFFECTIVE UPON PASSAGE] (a) This SECTION applies to an individual appointed to serve as a precinct election officer under IC 3-6-6-39.**

**(b) The secretary of state and election division may establish guidelines for an individual to serve in a nonpartisan manner. The guidelines adopted under this SECTION expire when the standards developed by the Help America Vote Foundation under 36 U.S.C. 152602 for this purpose become effective.**

**(c) This SECTION expires January 1, 2009.**

**SECTION 91. THE FOLLOWING ARE REPEALED [EFFECTIVE UPON PASSAGE]: IC 3-6-5.1-1; IC 3-6-7-2; IC 3-10-12-3; IC 3-11-8-28; IC 3-11.5-5-4; IC 3-11.7-5-6.**

**SECTION 92. An emergency is declared for this act.**

(Reference is to ESB 341 as printed March 29, 2005.)

C. LAWSON	RICHARDSON
BREAUX	MAHERN
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

**CONFERENCE COMMITTEE REPORT**  
**EHB 1431-1; filed April 26, 2005, at 3:20 p.m.**

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1431 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

**SECTION 1. IC 6-7-1-29.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29.1. (a) ~~One-third (1/3)~~ **One-sixth (1/6)** of the money in the cigarette tax fund is annually appropriated to the department of natural resources.**

**(b) The department shall use at least two percent (2%) but not more than twenty-one percent (21%) of the money appropriated to it under this section for:**

**(1) flood control and water resource projects, including multiple-purpose reservoirs; and**

**(2) applied research related to technical water resource problems.**

The department may use the money to plan, design, acquire land for, or construct the projects.

**(c) The department shall use at least thirty-six percent (36%) of the money appropriated to it under this section to construct, reconstruct, rehabilitate, or repair general conservation facilities or to acquire land.**

**(d) The department shall use at least forty-three percent (43%) of the money appropriated to the department under this section for soil conservation and lake and river enhancement under IC 14-32.**

**SECTION 2. IC 6-7-1-29.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 29.3. **One-sixth (1/6) of the money in the cigarette tax fund shall be deposited in the clean water Indiana fund established by IC 14-32-8-6.****

**SECTION 13. IC 13-11-2-74.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 74.5. (a) "Exempt isolated wetland", for purposes of IC 13-18 and environmental**

management laws, means an isolated wetland that:

(1) is a voluntarily created wetland unless:

(A) the wetland is approved by the department for compensatory mitigation purposes in accordance with a permit issued under Section 404 of the Clean Water Act or IC 13-18-22;

(B) the wetland is reclassified as a state regulated wetland under ~~IC 13-18-22-6(c); IC 13-18-22-6(e);~~ or

(C) the owner of the wetland declares, by a written instrument:

(i) recorded in the office of the recorder of the county or counties in which the wetland is located; and

(ii) filed with the department;

that the wetland is to be considered in all respects to be a state regulated wetland;

(2) exists as an incidental feature in or on:

(A) a residential lawn;

(B) a lawn or landscaped area of a commercial or governmental complex;

(C) agricultural land;

(D) a roadside ditch;

(E) an irrigation ditch; or

(F) a manmade drainage control structure;

(3) is a fringe wetland associated with a private pond;

(4) is, or is associated with, a manmade body of surface water of any size created by:

(A) excavating;

(B) diking; or

(C) excavating and diking;

dry land to collect and retain water for or incidental to agricultural, commercial, industrial, or aesthetic purposes;

(5) subject to subsection (c), is a Class I wetland with an area, as delineated, of one-half (1/2) acre or less;

(6) subject to subsection (d), is a Class II wetland with an area, as delineated, of one-fourth (1/4) acre or less;

(7) is located on land:

(A) subject to regulation under ~~the~~ United States Department of Agriculture wetland conservation ~~rules; also known as~~ **programs, including Swampbuster and the Wetlands Reserve Program**, because of voluntary enrollment in a federal farm program; and

(B) used for agricultural or ~~associated other~~ purposes allowed under the ~~rules programs~~ referred to in clause (A); or

(8) is constructed for reduction or control of pollution.

(b) For purposes of subsection (a)(2), an isolated wetland exists as an incidental feature:

(1) if:

(A) the owner or operator of the property or facility described in subsection (a)(2) does not intend the isolated wetland to be a wetland;

(B) the isolated wetland is not essential to the function or use of the property or facility; and

(C) the isolated wetland arises spontaneously as a result of damp soil conditions incidental to the function or use of the property or facility; and

(2) if the isolated wetland satisfies any other factors or criteria established in rules that are:

(A) adopted by the water pollution control board; and

(B) not inconsistent with the factors and criteria described in subdivision (1).

(c) The total acreage of Class I wetlands on a tract to which the exemption described in subsection (a)(5) may apply is limited to the larger of:

(1) the acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in subsection (a)(5); and

(2) fifty percent (50%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in subsection (a)(5) but for the limitation of this subsection.

(d) The total acreage of Class II wetlands on a tract to which the exemption described in subsection (a)(6) may apply is limited to the

larger of:

- (1) the acreage of the largest individual isolated wetland on the tract that qualifies for the exemption described in subsection (a)(6); and
- (2) thirty-three and one-third percent (33 1/3%) of the cumulative acreage of all individual isolated wetlands on the tract that would qualify for the exemption described in subsection (a)(6) but for the limitation of this subsection.

(e) An isolated wetland described in subsection (a)(5) or (a)(6) does not include an isolated wetland on a tract that contains more than one (1) of the same class of wetland until the owner of the tract notifies the department that the owner has selected the isolated wetland to be an exempt isolated wetland under subsection (a)(5) or (a)(6) consistent with the applicable limitations described in subsections (c) and (d).

SECTION 18. IC 13-18-22-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Except as otherwise specified in ~~subsection~~ **subsections (b) and (c)**, compensatory mitigation shall be provided in accordance with the following table:

Wetland Class	Replacement Class	On-site Ratio	Off-site Ratio
Class I	Class II or III	1 to 1	1 to 1
Class I	Class I	1.5 to 1	1.5 to 1
Class II	Class II or III	1.5 to 1	2 to 1
		Nonforested	Nonforested
		2 to 1	2.5 to 1
		Forested	Forested
Class III	Class III	2 to 1	2.5 to 1
		Nonforested	Nonforested
		2.5 to 1	3 to 1
		Forested	Forested

(b) The compensatory mitigation ratio shall be lowered to one to one (1:1) if the compensatory mitigation is completed before the initiation of the wetland activity.

(c) **A wetland that is created or restored as a water of the United States may be used, as an alternative to the creation or restoration of an isolated wetland, as compensatory mitigation for purposes of this section. The replacement class of a wetland that is a water of the United States shall be determined by applying the characteristics of a Class I, Class II, or Class III wetland, as appropriate, to the replacement wetland as if it were an isolated wetland.**

~~(c)~~ (d) The off-site location of compensatory mitigation must be within:

- (1) the same eight (8) digit U.S. Geological Service hydrologic unit code; or
- (2) the same county;

as the isolated wetlands subject to the authorized wetland activity.

~~(d)~~ (e) Exempt isolated wetlands may be used to provide compensatory mitigation for wetlands activities in state regulated wetlands. An exempt isolated wetland that is used to provide compensatory mitigation becomes a state regulated wetland.

SECTION 5. IC 14-32-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) The clean water Indiana fund is established to carry out the purposes of this chapter. The fund shall be administered by the division of soil conservation subject to the direction of the board.

(b) The fund consists of:

**(1) amounts deposited in the fund under IC 6-7-1-29.3;**

~~(1)~~ (2) amounts appropriated by the general assembly; and

~~(2)~~ (3) donations, grants, and money received from any other source.

(c) The expenses of administering the fund shall be paid from money in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

SECTION 6. IC 15-1.5-1-11 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2005]: **Sec. 11. "Barn" refers to the center for agricultural science and heritage established by IC 15-1.5-10.5-3.**

SECTION 7. IC 15-1.5-1-12 IS ADDED TO THE INDIANA

CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2005]: **Sec. 12. "Barn director" refers to the individual who administers the educational programs and operations of the barn.**

SECTION 8. IC 15-1.5-1-13 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2005]: **Sec. 13. "Trustees" refers to the board of trustees of the barn established by IC 15-1.5-10.5-3.5.**

SECTION 9. IC 15-1.5-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The commission consists of eight (8) members as follows:

(1) Five (5) members appointed by the governor.

(2) The presiding officer of the board.

(3) The commissioner of agriculture or the commissioner's designee.

(4) The presiding officer of the ~~board of trustees of the center for agricultural science and heritage~~ or the presiding officer's designee who must be selected from the membership of the ~~board of trustees of the center for agricultural science and heritage~~.

(b) Not more than one (1) member appointed under subsection (a)(1) may reside in the same district. Each district is not required to have a member of the commission represent it.

(c) Not more than three (3) members appointed under subsection (a)(1) may be affiliated with the same political party.

(d) Two (2) members appointed under subsection (a)(1) must have a recognized interest in agriculture or agribusiness.

SECTION 10. IC 15-1.5-2-10.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2005]: **Sec. 10.5. (a) The commission shall:**

**(1) adopt:**

**(A) rules under IC 4-22-2; or**

**(B) a policy;**

**establishing a code of ethics for employees of the commission; or**

**(2) decide it wishes to be under the jurisdiction and rules adopted by the state ethics commission.**

**(b) A code of ethics adopted by rules or policy under this section must be consistent with Indiana law and approved by the governor.**

SECTION 11. IC 15-1.5-10.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The center for agricultural science and heritage (the barn) is established.

~~(b) The barn:~~

~~(1) is a body corporate and politic separate from the state;~~

~~(2) is not a state agency; and~~

~~(3) performs essential governmental functions.~~

~~(c)~~ (b) The following are the purposes for which the barn is established:

(1) To educate the public concerning the past, present, and future of American agriculture and rural life.

(2) To educate youth and the general public about American agriculture and food systems.

(3) To provide educational programming for youth that complements school curricula, both onsite and in the classroom.

(4) To create a synergy between Indiana's institutions of education and agriculture related industries.

(5) To generate economic vitality, convention activity, and tourism activity for Indiana.

(6) To become a center for agricultural business and thinking, a clearinghouse of agricultural information, a resource center for educators and the public, and a repository for agricultural artifacts and history.

(7) To create a central, prominent partner with whom agricultural organizations can launch, collaborate on, and coordinate programs.

(8) To position Indiana as the recognized agricultural center of the nation.

SECTION 12. IC 15-1.5-10.5-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2005]: **Sec. 3.5. The board of trustees for the barn is established.**

SECTION 13. IC 15-1.5-10.5-4 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The ~~barn is governed by a board of trustees govern the barn.~~ The trustees ~~include the following consist of~~ seventeen (17) individuals: **members as follows:**

- (1) The governor or the governor's designee.
- (2) The commissioner of agriculture or the commissioner's designee.
- ~~(3) The state superintendent of public instruction or the state superintendent's designee.~~
- ~~(4) (3) The dean of agriculture of Purdue University or the dean's designee.~~
- ~~(5) (4) The president of the Purdue University Agriculture Alumni Association or the president's designee.~~
- (5) The state superintendent of public instruction or the state superintendent's designee.**
- (6) The state veterinarian or the state veterinarian's designee.
- (7) The presiding officer of the state fair commission or the presiding officer's designee selected from the membership of the state fair commission.
- (8) The presiding officer of the state fair board or the presiding officer's designee selected from the membership of the state fair board.
- (9) One (1) member appointed by the largest Indiana organization representing agricultural interests in Indiana, as determined by the number of members of the organization. The member serves at the pleasure of the member's organization.
- (10) One (1) member appointed by the second largest Indiana organization representing agricultural interests in Indiana, as determined by the number of members of the organization. The member serves at the pleasure of the member's organization.
- (11) Seven (7) members appointed by the governor.

(b) Of the members appointed under subsection (a)(11), not more than four (4) may be affiliated with the same political party.

(c) Each member appointed under subsection (a)(11) must have a recognized interest in the barn.

SECTION 14. IC 15-1.5-10.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The term of an individual appointed to the trustees under section 4(a)(11) of this chapter:

- (1) is three (3) years; and
  - (2) expires September 30 of the year of expiration.
- (b) A member appointed under section 4(a)(11) of this chapter may be reappointed to the trustees. Except as provided in subsection (c), a member appointed under section 4(a)(11) may not serve for more than nine (9) years in any twelve (12) year period.

(c) For purposes of the limitation on the number of years a member may serve under subsection (b), any time of not more than two (2) years a member serves:

- (1) as an initial appointment to the trustees; or
  - (2) to fill a vacancy;
- may not be considered.

**(d) This section expires September 30, 2005.**

SECTION 15. IC 15-1.5-10.5-5.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5.3. (a) Effective October 1, 2005, the term of a member appointed to the trustees under section 4(a)(11) of this chapter:

- (1) is four (4) years;
  - (2) begins on the later of:
    - (A) October 1 after the expiration of the term of the trustee whom the member is appointed to succeed; or
    - (B) the day the member is appointed; and
  - (3) expires September 30 of the fourth year after the expiration of the term of the member's immediate predecessor.
- (b) Except as provided in subsection (c), a member appointed under section 4(a)(11) of this chapter:
- (1) may be reappointed for a new term;
  - (2) if reappointed, is the member's own successor or predecessor for purposes of subsection (a); and
  - (3) may not serve as a trustee for more than eight (8) years in a twelve (12) year period.
- (c) A member appointed under section 4(a)(11) of this chapter

before October 1, 2005, may not serve as a trustee more than nine (9) years in a twelve (12) year period.

SECTION 16. IC 15-1.5-10.5-5.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5.5. The trustees may do the following, **with approval by the commission:**

- (1) Enter into contracts related to the trustees' powers and duties under this chapter.
- ~~(2) Receive, hold, and expend appropriations made by the general assembly.~~
- ~~(3) (2) Receive gifts.~~
- ~~(4) (3) Charge admissions.~~
- ~~(5) (4) Purchase, lease, and sell real and personal property.~~
- ~~(6) Develop, improve, and maintain the property leased or owned by the trustees.~~
- ~~(7) Adopt rules under IC 4-22-2 to implement this chapter.~~

SECTION 17. IC 15-1.5-10.5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) The governor ~~may shall~~ appoint an individual ~~to the trustees~~ to fill a vacancy ~~in among the position of a trustee appointed under subsection 4(a)(11) of this chapter: trustees.~~

(b) ~~An~~ The individual appointed under subsection ~~(a)~~ by the governor under subsection (a) serves for the remainder of the unexpired term of the ~~member trustee~~ whom the individual replaces.

(c) The period of the unexpired term for which an individual serves after appointment under this section may not be considered in determining the number of years that ~~the member a trustee~~ has served in a twelve (12) year period for purposes of section 5(b) or 5.3(b)(3) of this chapter.

SECTION 18. IC 15-1.5-10.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) The trustees shall in October 2001, and in October of each odd-numbered year thereafter, elect a member of the trustees ~~as serving under section 4(a)(11) of this chapter to be~~ the presiding officer of the trustees. for a term of two (2) years that begins on November 1 of the year in which the election is held. The ~~member trustee~~ elected under this subsection is the presiding officer of the trustees until the earlier of the following:

- (1) The expiration of the ~~member's trustee's~~ term.
  - (2) The replacement of the ~~member trustee~~ as presiding officer by the trustees.
- (b) The trustees may elect other officers of the barn from among for the trustees from the trustees serving under section 4(a)(11) of this chapter.

SECTION 19. IC 15-1.5-10.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) The trustees shall recommend an individual to be employed by the commission as ~~executive the barn director, of the barn subject to the approval of the governor. If the governor approves an individual recommended by the trustees, the trustees may employ the individual as executive director. If the governor does not approve an individual recommended by the trustees, the trustees shall submit another recommendation to the governor: subject to approval by the commission.~~

- (b) The executive director employed under this section:
  - ~~(1) is the chief administrative officer of the barn; and~~
  - ~~(2) barn director shall implement the policies of the trustees and the commission.~~

(c) The trustees commission may delegate any of the trustees' commission's powers to the executive barn director. The trustees commission may make a delegation under this subsection through a resolution adopted by the trustees.

(d) Notwithstanding IC 4-2-6-5, the compensation for the executive director and other employees of the trustees may be paid in full or in part by the nonprofit entity established under section 10 of this chapter: by either of the following:

- (1) A resolution adopted by the commission.
  - (2) A rule adopted by the commission under IC 4-22-2.
- (d) Notwithstanding IC 4-2-6-5, with approval by the commission, commission employees:
- (1) may be compensated in full or in part by the nonprofit entity established under section 10 of this chapter; and
  - (2) may perform services that support the purposes of the nonprofit entity established under section 10 of this chapter.
- SECTION 20. IC 15-1.5-10.5-8.1 IS ADDED TO THE INDIANA

CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 8.1. (a) The barn director may hire staff for the barn subject to the budget approved by the trustees and the commission.**

**(b) The staff of the barn are:**

- (1) employees of the commission; and**
- (2) accountable to the commission directly or through the executive director of the commission.**

SECTION 21. IC 15-1.5-10.5-8.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 8.2. The barn director may delegate a power or duty of the barn director to a member of the barn staff.**

SECTION 22. IC 15-1.5-10.5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 9. A majority vote of the trustees is necessary for the adoption of:**

- (1) policy decisions;**
- (2) decisions concerning the employment of personnel; or**
- (3) major expenditures.**

**to take official action.**

SECTION 23. IC 15-1.5-10.5-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 10. (a) The trustees may establish a nonprofit entity to solicit, raise, and accept funds.**

- (1) to pay the administrative costs of the barn;**
- (2) for use in the maintenance and operations of the barn; and**
- (3) to fund capital improvements of the barn's principal facility and related facilities.**

**(b) The nonprofit entity established under this section may receive the proceeds from the operations of the barn, subject to approval by the commission.**

**(c) The nonprofit entity established under this section is governed by a board of directors. The directors include:**

- (1) the presiding officer of the trustees of the barn, who shall may act as presiding officer of the board of directors; and**
- (2) four (4) individuals appointed by the trustees.**

**(d) An expenditure of public funds for capital improvements by the nonprofit entity established under this section must be approved by the trustees.**

SECTION 24. IC 15-1.5-10.5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 11. The executive director of the barn commission shall pay the operating expenses for capital improvements of the barn approved by the trustees of the barn from the funds allocated by the commission to the barn.**

SECTION 25. IC 15-1.5-10.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 12. At the first meeting each year of the state fair advisory committee established by IC 15-1-1.5-4, the trustees shall report the following:**

- (1) The activities of the barn during the previous calendar year.**
- (2) The financial condition of the barn for the barn's most recently completed fiscal year.**
- (3) The board of trustees' plans for the barn for the current calendar year.**

SECTION 26. IC 15-1.5-10.5-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 13. (a) Subject to subsection (b):**

- (1) each member of the trustees who is not a state employee is entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b) and is entitled to reimbursement for travel expenses and other expenses actually incurred in connection with the member's duties; and**
- (2) each member of the trustees who is a state employee is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties;**

**as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.**

**(b) The commission shall adopt a policy for:**

- (1) the number of meetings the trustees may hold; and**
- (2) payment of per diem and travel expenses for trustees' meetings and during the time of other required activities.**

SECTION 27. IC 15-1.5-10.5-14 IS ADDED TO THE INDIANA

CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 14. The trustees may not hold real property in the trustees' name.**

SECTION 28. IC 15-6-4-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 16. The board shall do the following:**

- (1) Elect from among the board's members a chairperson, vice chairperson, secretary, treasurer, and other officers the board considers necessary.**
- (2) Employ personnel and contract for services that are necessary for the proper implementation of this chapter.**
- (3) Establish accounts in adequately protected financial institutions to receive, hold, and disburse funds accumulated under this chapter.**
- (4) Bond the treasurer and other persons as necessary to ensure adequate protection of funds received and administered by the board.**
- (5) Authorize the expenditure of funds and the contracting of expenditures to conduct proper activities under this chapter.**
- (6) Annually establish priorities and prepare and approve a budget consistent with the estimated resources of the board and the scope of this chapter.**
- (7) Provide for an independent audit, provide the results of the audit to the state board of accounts and the department of agriculture, and make the results of the audit available to all interested persons.**
- (8) Procure and evaluate data and information necessary for the proper implementation of this chapter.**
- (9) Formulate and execute assessment procedures and methods of collection.**
- (10) Establish procedures to annually inform all producers regarding board members, policy, expenditures, and programs for the preceding year.**
- (11) Receive and investigate, or cause to be investigated, complaints and violations of this chapter and take necessary action within its authority.**
- (12) Take any other action necessary for the proper implementation of this chapter, including the adoption of rules under IC 4-22-2.**

SECTION 29. IC 15-6-4-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 26. The board shall remit deposit all assessments received under this chapter to the treasurer of state for deposit in the Indiana dairy industry development fund established by section 28 the board under section 28.1 of this chapter.**

SECTION 30. IC 15-6-4-28.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 28.1. (a) The board shall establish and administer a fund for assessments received under this chapter. The fund is not a part of the state treasury.**

**(b) The board shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund.**

**(c) The board shall use the money in the fund to implement this chapter.**

**(d) The board may not use money in the fund to establish a program of its own but shall fund an active, ongoing, qualified program in Indiana as stated in 7 U.S.C. 4505 and the regulations adopted under that law. A qualified program that receives money under this subsection may use the money to jointly sponsor projects with any private or public organization for any of the following:**

- (1) Advertising and promotion.**
- (2) Market research.**
- (3) Nutrition and product research and development.**
- (4) Nutrition and educational programs.**
- (5) Any other activity to meet the objectives of this chapter.**

SECTION 31. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 15-1.5-10.5-1; IC 15-1.5-10.5-2; IC 15-1.5-10.5-8.3; 15-6-4-28.

SECTION 32. [EFFECTIVE JULY 1, 2005] **(a) As used in this SECTION, "board" refers to the Indiana dairy industry**



development board established by IC 15-6-4-9.

(b) The Indiana dairy industry development fund established by IC 15-6-4-28 is abolished.

(c) Money in the Indiana dairy industry development fund on June 30, 2005, is appropriated to the board.

(d) On July 1, 2005, the treasurer of state shall transfer all:

(1) money in the Indiana dairy industry development fund; and

(2) records relating to the Indiana dairy industry development fund;

to the board.

(e) The board shall deposit the money transferred by the treasurer of state under this SECTION into the fund established by the board under IC 15-6-4-28.1, as added by this act.

(f) This SECTION expires January 1, 2006.

(Reference is to EHB 1431 as printed March 18, 2005.)

FRIEND	WEATHERWAX
AUSTIN	LEWIS
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT  
ESB 298-1; filed April 26, 2005, at 3:50 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 298 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 4-22-2-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28. (a) As used in this section, "total estimated economic impact" means the annual economic impact of a rule on all regulated persons after the rule is fully implemented under subsection (g).

(~~(a)~~) (b) The Indiana economic development council may review and comment on any proposed rule and may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on businesses. The agency that intends to adopt the proposed rule shall respond in writing to the Indiana economic development council concerning the council's comments or suggested alternatives before adopting the proposed rule under section 29 of this chapter.

(~~(b)~~) (c) Subject to subsection (f) and not later than fifty (50) days before the public hearing required by section 26 of this chapter, an agency shall ~~also~~ submit a proposed rule ~~with an~~ to the legislative services agency for a review under subsection (d) if the agency proposing the rule determines that the rule will have a total estimated economic impact greater than five hundred thousand dollars (\$500,000) on the all regulated ~~entities: persons.~~ to the legislative services agency after the preliminary adoption of the rule. In determining the total estimated economic impact under this subsection, the agency shall consider any applicable information submitted by the regulated persons affected by the rule. To assist the legislative services agency in preparing the fiscal impact statement required by subsection (d), the agency shall submit, along with the proposed rule, the data used and assumptions made by the agency in determining the total estimated economic impact of the rule.

(d) Except as provided in subsection (~~(c)~~), (e), before the adoption of the rule the legislative services agency shall prepare, and not more than forty-five (45) days after receiving a proposed rule under subsection (c), the legislative services agency shall prepare, using the data and assumptions provided by the agency proposing the rule, along with any other data or information available to the legislative services agency, a fiscal ~~analysis~~ impact statement concerning the effect that compliance with the proposed rule will have on: ~~the:~~

(1) the state; and

(2) all ~~entities~~ persons regulated by the proposed rule.

The fiscal ~~analysis~~ impact statement must contain an estimate of the

total estimated economic impact of the proposed rule and a determination concerning the extent to which the proposed rule creates an unfunded mandate on a state agency or political subdivision. The fiscal ~~analysis~~ impact statement is a public document. The legislative services agency shall make the fiscal ~~analysis~~ impact statement available to interested parties upon request. The agency proposing the rule shall consider the fiscal ~~analysis~~ impact statement as part of the rulemaking process and shall provide the legislative services agency with the information necessary to prepare the fiscal ~~analysis~~ impact statement. The legislative services agency may also receive and consider applicable information from the regulated ~~entities~~ persons affected by the rule in preparation of the fiscal ~~analysis~~ impact statement.

(~~(c)~~) (e) With respect to a proposed rule subject to IC 13-14-9:

(1) the department of environmental management shall give written notice to the legislative services agency of the proposed date of preliminary adoption of the proposed rule not less than sixty-six (66) days before that date; and

(2) the legislative services agency shall prepare the fiscal ~~analysis~~ impact statement referred to in subsection (~~(b)~~) (d) not later than twenty-one (21) days before the proposed date of preliminary adoption of the proposed rule.

(f) In determining whether a proposed rule has a total estimated economic impact greater than five hundred thousand dollars (\$500,000), the agency proposing the rule shall consider the impact of the rule on any regulated person that already complies with the standards imposed by the rule on a voluntary basis.

(g) For purposes of this section, a rule is fully implemented after:

(1) the conclusion of any phase-in period during which:

(A) the rule is gradually made to apply to certain regulated persons; or

(B) the costs of the rule are gradually implemented; and

(2) the rule applies to all regulated persons that will be affected by the rule.

In determining the total estimated economic impact of a proposed rule under this section, the agency proposing the rule shall consider the annual economic impact on all regulated persons beginning with the first twelve (12) month period after the rule is fully implemented. The agency may use actual or forecasted data and may consider the actual and anticipated effects of inflation and deflation. The agency shall describe any assumptions made and any data used in determining the total estimated economic impact of a rule under this section.

SECTION 2. IC 13-14-9-4.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.2. Not less than fourteen (14) days before the date of preliminary adoption of a proposed rule by a board, the department shall make available to the board the fiscal ~~analysis~~ impact statement prepared by the legislative services agency with respect to the proposed rule under ~~IC 4-22-2-28(e).~~ IC 4-22-2-28(e).

SECTION 3. IC 20-1-20.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) As used in this section, "total estimated fiscal impact" means the annual fiscal impact of a recommendation on all affected entities after the recommendation is fully implemented under subsection (f).

(~~(a)~~) (b) The roundtable shall provide recommendations on subjects related to education to the following:

(1) The governor.

(2) The superintendent of public instruction.

(3) The general assembly.

(4) The board.

(~~(b)~~) (c) Subject to subsection (e), before providing a recommendation under subsection (~~(a)~~), (b), the roundtable shall prepare an analysis of the total estimated fiscal impact that the recommendation will have on the state and all political subdivisions and private schools affected by the recommendation. In preparing an analysis under this subsection, the roundtable shall consider any applicable information submitted by entities affected by the recommendation. The analysis under this subsection must be submitted with the recommendation under subsection (~~(a)~~), (b).

(~~(c)~~) (d) Whenever the roundtable provides a recommendation under



subsection (a) (b) and the **total estimated** fiscal impact prepared under subsection (b) (c) indicates that the impact of the recommendation will be at least five hundred thousand dollars (\$500,000), the roundtable shall submit a copy of the recommendation and the fiscal **impact analysis** prepared under subsection (b) (c) to the legislative services agency for review. Not more than forty-five (45) days after receiving a copy of the recommendation and fiscal analysis, the legislative services agency shall prepare a fiscal **analysis impact statement** concerning the effect that compliance with the recommendation will have on:

- (1) the state; and
- (2) all political subdivisions and private schools affected by the proposed recommendation.

The fiscal **analysis impact statement** must contain an estimate of the direct **total estimated** fiscal impact of the recommendation and a determination concerning the extent to which the recommendation creates an unfunded mandate on the state, a political subdivision, or a private school affected by the proposed recommendation. The fiscal **analysis impact statement** is a public document. The legislative services agency shall make the fiscal **analysis impact statement** available to interested parties upon request. The roundtable shall provide the legislative services agency with the information necessary to prepare the fiscal **analysis impact statement**. The legislative services agency may also receive and consider applicable information from the entities affected by the recommendation in preparation of the fiscal **analysis impact statement**. The legislative services agency shall provide copies of its fiscal **analysis impact statement** to each of the persons described in subsection (a) (b).

(e) In determining whether a recommendation under this section has a total estimated fiscal impact of at least five hundred thousand dollars (\$500,000) on the affected entities, the roundtable shall consider the impact of the recommendation on any entity that already complies with the standards imposed by the recommendation on a voluntary basis, if applicable.

(f) For purposes of this section, a recommendation is fully implemented after:

- (1) the conclusion of any phase-in period during which:
  - (A) the recommendation is gradually made to apply to certain affected entities; or
  - (B) the costs of the recommendation are gradually implemented; and
- (2) the recommendation applies to all affected entities that will be affected by the recommendation.

In determining the total estimated fiscal impact of a recommendation under this section, the roundtable shall consider the annual fiscal impact on all affected entities beginning with the first twelve (12) month period or first school year after the recommendation is fully implemented, whichever applies. The roundtable may use actual or forecasted data and may consider the actual and anticipated effects of inflation and deflation. The roundtable shall describe any assumptions made and any data used in determining the total estimated fiscal impact of a recommendation under this section.

SECTION 4. [EFFECTIVE JULY 1, 2005] (a) IC 4-22-2-28, as amended by this act, applies to a rule that is published in the Indiana Register under IC 4-22-2-24 or under IC 13-14-9-4(1) after June 30, 2005.

(b) IC 20-1-20.5-8, as amended by this act, applies to a recommendation by the education roundtable that is submitted to the governor, the state superintendent of public instruction, the general assembly, or the Indiana state board of education after June 30, 2005.

(c) This SECTION expires January 1, 2007.

(Reference is to ESB 298 as printed March 22, 2005.)

M. YOUNG	HINKLE
HUME	PELATH
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT  
 EHB 1453-1; filed April 26, 2005, at 3:58 p.m.

Mr. Speaker: Your Conference Committee appointed to confer

with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1453 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Page 8, between lines 11 and 12, begin a new paragraph and insert: "SECTION 7. IC 27-16 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

## ARTICLE 16. PROFESSIONAL EMPLOYER ORGANIZATIONS

### Chapter 1. Applicability

Sec. 1. This article applies after December 31, 2005.

### Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. (a) "Administrative fee" means the fee charged to a client by a professional employer organization for professional employer services.

(b) The term does not include any amount charged to a client by a professional employer organization for wages and salaries, benefits, worker's compensation, payroll taxes, withholding, or other assessments paid by a professional employer organization to or on behalf of a covered employee.

Sec. 3. "Client" means a person that enters into a professional employer agreement with a professional employer organization.

Sec. 4. "Co-employed" means that an individual is contemporaneously employed by both a client and a professional employer organization.

Sec. 5. "Co-employer" refers to a client or a professional employer organization that has entered into a professional employer agreement and has a relationship with a co-employed individual.

Sec. 6. "Co-employment relationship" means a relationship:

- (1) between a:
  - (A) client and a professional employer organization; or
  - (B) co-employer and a covered employee; and
- (2) that results from the client and the professional employer organization entering into a professional employer agreement.

Sec. 7. "Commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

Sec. 8. (a) "Covered employee" means an individual who is co-employed.

(b) The term includes an individual who is an officer, a director, a shareholder, a partner, or a manager of a client to the extent the professional employer organization and the client expressly agree that the individual:

- (1) is described in subsection (a); and
- (2) acts as an operational manager or performs day to day operational services for the client;

as reflected in the professional employer agreement.

Sec. 9. "Department" refers to the department of insurance created by IC 27-1-1-1.

Sec. 10. "PEO group" means two (2) or more professional employer organizations that are majority owned or commonly controlled by the same entity, parent, or controlling person.

Sec. 11. "Person" means an individual, a partnership, a corporation, a limited liability company, an association, or another legally recognized entity.

Sec. 12. "Professional employer agreement" means a written contract between a person and a professional employer organization:

- (1) under which all or a majority of the person's employees become covered employees;
- (2) that provides for the allocation of employer rights and obligations between the person and the professional employer organization with respect to the covered employees; and
- (3) that specifies the professional employer services that will be provided.

Sec. 13. (a) "Professional employer organization" or "PEO" means a person engaged in the business of providing professional

employer services.

(b) The term does not include the following:

- (1) An arrangement through which a person:
  - (A) whose principal business activity is an activity other than entering into professional employer agreements; and
  - (B) that does not hold the person out as a professional employer organization;

shares employees with a commonly owned company within the meaning of Section 414(b) and 414(c) of the Internal Revenue Code of 1986, as amended.

(2) An independent contractor arrangement through which a person:

- (A) assumes responsibility for a product produced or a service performed by the person or the person's agent; and
- (B) retains and exercises primary direction and control over the work performed by an individual whose services are supplied under the independent contractor arrangement.

(3) The provision of temporary help services.

Sec. 14. "Professional employer services" means the services that are provided to a client by a professional employer organization under a professional employer agreement.

Sec. 15. "Temporary help service" means a service consisting of a person that:

- (1) recruits and hires the person's own employees, not including an officer, a manager, or a controlling person of a client to which the person's own employee is assigned by the person;
- (2) identifies organizations that need the services of employees described in subdivision (1);
- (3) assigns employees described in subdivision (1) to:
  - (A) perform work or services for organizations described in subdivision (2);
  - (B) support or supplement the workforces of organizations described in subdivision (2); or
  - (C) provide assistance in special work situations, including employee absences, skill shortages, seasonal workloads, and special assignments or projects; and
- (4) customarily attempts to reassign the employees described in subdivision (1) to other organizations when an assignment described in subdivision (3) is completed.

### Chapter 3. Effect on Rights, Duties, and Obligations

Sec. 1. This article and a professional employer agreement do not affect, modify, or amend:

- (1) a collective bargaining agreement; or
- (2) rights or obligations of a client, PEO, or covered employee under:
  - (A) the federal National Labor Relations Act (29 U.S.C. 151 et seq.);
  - (B) the federal Railway Labor Act (45 U.S.C. 151 et seq.); or
  - (C) IC 22-7.

Sec. 2. This article and a professional employer agreement do not do the following:

- (1) Diminish, abolish, or remove the obligations of a client to a covered employee that exist before the effective date of the professional employer agreement.
- (2) Affect, modify, or amend a contractual relationship or restrictive covenant:
  - (A) between a covered employee and a client that is in effect on the effective date of the professional employer agreement; or
  - (B) that is entered into between a client and a covered employee after the effective date of the professional employer agreement.

A PEO is not responsible or liable for a dispute in connection with or arising out of a contractual relationship or restrictive covenant described in this subdivision unless the PEO has otherwise specifically agreed in writing.

(3) Create a new or additional enforceable right of a covered employee against a PEO that is not specifically provided by the professional employer agreement or this

article.

Sec. 3. (a) This article and a professional employer agreement do not affect, modify, or amend a federal, state, or local:

- (1) license;
- (2) registration; or
- (3) certification;

requirement that applies to a client or covered employee.

(b) The following apply to a federal, state, or local requirement described in subsection (a):

(1) A covered employee who is required to be licensed, registered, or certified is considered solely an employee of the client for purposes of a license, registration, or certification requirement.

(2) A PEO is not considered to engage in an occupation, a trade, a profession, or another activity that is:

- (A) subject to a license, registration, or certification requirement; or

(B) otherwise regulated by a governmental entity;

solely because the PEO has entered into and maintained a co-employment relationship with a covered employee who is subject to a requirement or regulation described in clause (A) or (B).

(3) A client has the sole right of direction and control of the professional or licensed activities of a covered employee and of the client's business.

(4) Only a:

(A) covered employee; or

(B) client;

that is subject to a requirement or regulation described in subdivision (2)(A) or (2)(B) is subject to the regulation by a regulatory or governmental entity responsible for licensing, registration, certification, or other regulation of the covered employee or client.

Sec. 4. (a) For purposes of the determination of tax credits and other economic incentives:

(1) provided by the state or another governmental entity; and

(2) based on employment;

a covered employee is considered an employee solely of the client.

(b) A client is entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of the employment of a covered employee of the client.

(c) If the grant or amount of an incentive is based on the number of employees a client employs:

(1) each client must be treated as employing only the covered employees actually working in the client's business operations; and

(2) covered employees working for other clients of the PEO must not be counted.

(d) A PEO shall provide, upon request by a client or an agency or a department of the state or of another governmental entity, employment information:

(1) reasonably required by an agency or a department of the state or of another governmental entity that is responsible for administration of a tax credit or economic incentive described in this section; and

(2) necessary;

to support a request, a claim, an application, or another action by a client seeking a tax credit or an economic incentive.

Sec. 5. With respect to a bid, a contract, a purchase order, or an agreement entered into with the state or a political subdivision of the state, a client's status or certification as a:

(1) small, minority owned, disadvantaged, or woman owned business enterprise; or

(2) historically underutilized business;

is not affected because the client has entered into the professional employment agreement.

### Chapter 4. Registration

Sec. 1. (a) A person shall not:

(1) provide professional employer services;

(2) advertise that the person:

(A) is a professional employer organization; or

(B) provides professional employer services; or

(3) otherwise hold the person out as a professional employer organization;

in Indiana unless the person is registered under this article.

(b) The registration requirement specified in subsection (a) applies to a person that performs any of the activities specified in subsection (a) regardless of the person's use of any of the following terms:

- (1) Professional employer organization.
- (2) PEO.
- (3) Staff leasing company.
- (4) Registered staff leasing company.
- (5) Employee leasing company.
- (6) Administrative employer.
- (7) Any other name.

Sec. 2. An applicant for registration under this article shall file with the department the following information:

- (1) The name or names under which the applicant conducts business.
- (2) The address of the principal place of business of the applicant and the address of each office the applicant maintains in Indiana.
- (3) The applicant's taxpayer or employer identification number.
- (4) A list by jurisdiction of each name under which the applicant has operated in the preceding five (5) years, including any alternative names, names of predecessors, and, if known, successor business entities.
- (5) A statement of ownership that includes the name and evidence of the business experience of any person that, individually or acting in concert with one (1) or more other persons, owns or controls, directly or indirectly, twenty-five percent (25%) or more of the equity interests of the applicant.
- (6) A statement of management that includes the name and evidence of the business experience of any individual who serves as president, chief executive officer, or otherwise has the authority to act as senior executive officer of the applicant.
- (7) A financial statement:

- (A) setting forth the financial condition of the applicant as of a date not earlier than one hundred eighty (180) days before the date the financial statement is submitted to the department;
- (B) prepared in accordance with generally accepted accounting principles; and
- (C) reviewed by an independent certified public accountant licensed to practice in the jurisdiction in which the accountant is located.

Sec. 3. (a) A PEO that is operating in Indiana on January 1, 2006, shall complete the PEO's initial registration not later than July 1, 2006.

(b) An initial registration under subsection (a) is valid until the end of the PEO's first fiscal year end that occurs after December 31, 2006.

(c) A PEO that is not operating in Indiana on December 31, 2005, shall complete the PEO's initial registration before commencement of operations in Indiana.

Sec. 4. A PEO shall, not more than one hundred eighty (180) days after the end of the PEO's fiscal year, renew the PEO's registration by filing a statement notifying the department of any changes in the information provided in the PEO's most recent registration or renewal.

Sec. 5. A PEO group may satisfy the reporting and financial requirements of this chapter on a combined or consolidated basis if each member of the PEO group guarantees the obligations under this article of each other member of the PEO group.

Sec. 6. (a) A PEO that is not domiciled in Indiana is eligible for a limited registration under this article if the PEO:

- (1) submits a properly executed request for limited registration on a form prescribed by the department;
- (2) is licensed or registered as a professional employer organization in another state that has licensure or registration requirements that are:

(A) substantially the same as; or

(B) more restrictive than; the requirements of this article;

(3) does not:

(A) maintain an office; or

(B) directly solicit clients located or domiciled in Indiana; and

(4) does not have more than fifty (50) covered employees who are employed or domiciled in Indiana on any day.

(b) A limited registration is valid for one (1) year and may be renewed.

(c) A PEO that seeks limited registration under this section shall provide to the department information and documentation necessary to show that the PEO qualifies for a limited registration.

(d) IC 27-16-6-1(a)(1) does not apply to a PEO that applies for limited registration under this section.

Sec. 7. The department shall adopt rules under IC 4-22-2 to provide for registration of a PEO without compliance with this chapter and IC 27-16-6 by the commissioner's acceptance of an affidavit or a certification:

- (1) provided by a bonded, independent, and qualified assurance organization that has been approved by the commissioner; and
- (2) that certifies the qualifications of a professional employer organization.

Sec. 8. The department shall maintain a list of PEOs that are registered under this article.

Sec. 9. The department may prescribe forms necessary to promote the efficient administration of this chapter.

Sec. 10. All records, reports, and other information obtained from a PEO under this chapter, except to the extent necessary for the proper administration of this chapter by the department, are confidential.

#### Chapter 5. Fees

Sec. 1. Upon filing an initial registration application under IC 27-16-4-2, a PEO shall pay an initial registration fee not to exceed five hundred dollars (\$500).

Sec. 2. Upon the filing of an annual renewal of a registration under IC 27-16-4-4, a PEO shall pay a renewal fee not to exceed two hundred fifty dollars (\$250).

Sec. 3. Upon initial application for limited registration under IC 27-16-4-6 and upon each annual renewal of the limited registration, a PEO shall pay a fee not to exceed two hundred fifty dollars (\$250).

Sec. 4. The department shall adopt rules under IC 4-22-2 to specify any fee to be charged for a PEO group registration.

Sec. 5. A PEO seeking registration under IC 27-16-4-7 shall pay an initial and annual fee not to exceed two hundred fifty dollars (\$250).

Sec. 6. (a) The department shall adopt rules under IC 4-22-2 to specify any other fee to be charged under this article.

(b) A fee:

- (1) for which the amount is not specified in; and
- (2) that is charged under;

this article must not exceed the amount reasonably necessary for the administration of this article.

Sec. 7. Fees collected under this chapter shall be deposited in the department of insurance fund established by IC 27-1-3-28.

#### Chapter 6. Financial Requirements

Sec. 1. (a) A PEO shall maintain either:

- (1) subject to section 2 of this chapter, a minimum net worth of fifty thousand dollars (\$50,000); or
- (2) subject to subsection (b), a bond with a market value of at least fifty thousand dollars (\$50,000).

(b) A bond described in subsection (a)(2) must be held by a depository designated by the department, securing payment by the PEO of all taxes, wages, benefits, or other entitlement due to or with respect to covered employees in the event that the PEO does not make the payments when due.

Sec. 2. A bond described in section 1(a)(2) of this chapter must not be included in the calculation of the minimum net worth described in section 1(a)(1) of this chapter.

## Chapter 7. General Requirements and Provisions

Sec. 1. Except as provided in a professional employer agreement, the following apply to a co-employment relationship:

(1) The client:

(A) may exercise and enforce all rights; and

(B) is obligated to perform all duties and responsibilities; that otherwise apply to an employer in an employment relationship, that are allocated to the client by the professional employer agreement and this article, and that are not specifically allocated to the PEO by the professional employer agreement and this article.

(2) The PEO:

(A) may exercise and enforce only the rights; and

(B) is obligated to perform only the duties and responsibilities; that are required of the PEO or specifically allocated to the PEO by this article and the professional employer agreement.

(3) Unless otherwise expressly agreed by the PEO and the client in the professional employer agreement, the client retains the exclusive right to direct and control the covered employees as necessary to:

(A) conduct the client's business;

(B) discharge the client's fiduciary responsibilities; or

(C) comply with licensure requirements that apply to the client or the covered employees.

Sec. 2. (a) Except as provided in this article, the co-employment relationship between a client and a PEO, and between a co-employer and a covered employee, is governed by the professional employer agreement.

(b) A professional employer agreement must specify the following:

(1) The allocation of rights, duties, and responsibilities described in section 1 of this chapter.

(2) Except as provided in subsection (c), that the PEO is responsible for:

(A) payment of wages to covered employees;

(B) withholding, collection, reporting, and remittance of payroll related and unemployment taxes; and

(C) to the extent the PEO has assumed responsibility in the professional employer agreement, making payments for employee benefits for covered employees.

(3) The allocation, to either the client or the PEO, of the responsibility to obtain worker's compensation coverage for covered employees from a worker's compensation insurer that is authorized under this title to conduct the business of insurance in Indiana.

(4) If the professional employer agreement allocates the responsibility under subdivision (3) to the PEO, a requirement that the PEO maintain and provide to the client, at the client's request at the termination of the professional employer agreement, records regarding loss experience related to the worker's compensation insurance coverage.

(c) A PEO is not responsible for an obligation between a client and a covered employee for payments in addition to the covered employee's salary, draw, or regular rate of pay, including bonuses, commissions, severance pay, deferred compensation, profit sharing, or vacation, sick, or other paid time off, unless the PEO has expressly agreed to assume liability for the payments in the professional employer agreement.

Sec. 3. A PEO shall provide written notice to each covered employee who is affected by a professional employer agreement entered into by the PEO concerning the general nature of the co-employment relationship between and among the PEO, the client, and the covered employee.

Sec. 4. (a) Except as expressly provided by the professional employer agreement:

(1) a client:

(A) is solely responsible for:

(i) the quality, adequacy, or safety of goods or services produced or sold in the client's business;

(ii) directing, supervising, training, and controlling the work of a covered employee with respect to the

business activities of the client; and

(iii) the acts, errors, or omissions of a covered employee with respect to activities described in item (ii); and

(B) is not liable for the acts, errors, or omissions of:

(i) the PEO; or

(ii) a covered employee of the client and a PEO when the covered employee is acting under the express direction and control of the PEO.

(2) A PEO is not liable for the acts, errors, or omissions of a client or a covered employee of the client when the covered employee is acting under the express direction and control of the client.

(3) A covered employee is not, solely as the result of being a covered employee of a PEO, an employee of the PEO for purposes of:

(A) general liability insurance;

(B) fidelity bonds;

(C) surety bonds;

(D) employer's liability that is not covered by worker's compensation; or

(E) liquor liability insurance;

carried by the PEO unless the covered employee is specified as an employee of the PEO by specific reference in the professional employer agreement and any applicable prearranged employment contract, insurance contract, or bond.

(b) This section does not limit:

(1) a contractual liability or obligation specified in a professional employer agreement; or

(2) the liabilities and obligations of a PEO or client as specified in this article.

Sec. 5. A PEO that offers, markets, sells, administers, or provides professional employer services under a professional employer agreement as provided in this article is not:

(1) engaged in the business of insurance; or

(2) acting as an administrator (as defined in IC 27-1-25-1).

Sec. 6. (a) A business license fee or another fee that is based upon gross receipts must, in the case of a PEO, be based upon the administrative fee of the PEO.

(b) A tax assessed on a per capita or per employee basis must be assessed against a:

(1) client for covered employees; and

(2) PEO for the PEO's employees who are not covered employees.

(c) In the case of tax imposed or calculated upon the basis of total payroll, a PEO is eligible to apply a small business allowance or exemption available to the client for covered employees for the purpose of computing the tax.

## Chapter 8. Benefit Plans

Sec. 1. A client and a PEO are each considered to be an employer for purposes of sponsoring retirement and welfare benefit plans for covered employees.

Sec. 2. A fully insured welfare benefit plan offered to covered employees of a single PEO is:

(1) considered to be a single employer welfare benefit plan; and

(2) not a multiple employer welfare arrangement (as defined in IC 27-1-34-1(b)) and is not required to comply with IC 27-1-34.

Sec. 3. For purposes of IC 27-8-15, all covered employees of a PEO participating in a group health benefit plan sponsored by the PEO are considered to be:

(1) employees of the PEO; and

(2) participating in a single employer plan.

Sec. 4. If a PEO offers to the PEO's covered employees a health benefit plan that is not fully insured by an insurer authorized under this title to conduct the business of insurance in Indiana, the health benefit plan must:

(1) be administered by an administrator licensed under IC 27-1-25;

(2) hold all plan assets, including participant contributions, in a trust account;

(3) provide sound reserves for the health benefit plan as

determined using generally accepted actuarial standards as set forth in an actuarial opinion filed with the commissioner and prepared and signed by a qualified actuary who:

- (A) is a member in good standing of the American Academy of Actuaries; and
- (B) meets the requirements established by the commissioner in rules adopted under IC 4-22-2;
- (4) annually submit current audited financial statements to the commissioner;
- (5) at the discretion of the commissioner, possess a written commitment, binder, or policy for stop-loss insurance:
  - (A) issued by an insurer authorized to conduct the business of insurance in Indiana; and
  - (B) that meets any specific and total coverage requirements established by the commissioner in rules adopted under IC 4-22-2;
- (6) be subject to audit for compliance with the requirements of this section by the department on a random basis or upon a finding of reasonable need; and
- (7) provide written notice to each covered employee participating in the health benefit plan that the health benefit plan is:
  - (A) self-insured or not fully insured; and
  - (B) subject to the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

#### Chapter 9. Worker's Compensation

Sec. 1. Subject to the specification required under IC 27-16-7-2(b)(3), a client and a PEO are both considered the employer of a covered employee for purposes of coverage under IC 22-3-2 through IC 22-3-7.

Sec. 2. The protection of the exclusive remedy provisions of IC 22-3-2-6 and IC 22-3-7-6 apply to the PEO, the client, and each covered employee and other employee of the client regardless of whether the PEO or the client is responsible to obtain the worker's compensation coverage for the covered employees under the professional employer agreement.

#### Chapter 10. Unemployment Compensation Insurance

Sec. 1. (a) For purposes of IC 22-4, a covered employee of a PEO is an employee of the PEO.

(b) A PEO is responsible for the payment of contributions, penalties, and interest on wages paid by the PEO to the PEO's covered employees during the term of the professional employer agreement.

Sec. 2. A PEO shall report and pay all required contributions to the unemployment compensation fund as required by IC 22-4-10 using the state employer account number and the contribution rate of the PEO.

#### Sec. 3. Upon the:

- (1) termination of a professional employer agreement; or
- (2) failure by a PEO to submit reports or make tax payments as required under this article;

the client must be treated by the department of workforce development as a new employer without a previous experience record unless the client is otherwise eligible for an experience rating."

Page 9, after line 18, begin a new paragraph and insert:

"SECTION 10. IC 34-30-2-119.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 119.7. IC 27-16-3-2(2) (Concerning a dispute involving a professional employer organization).

SECTION 11. [EFFECTIVE JULY 1, 2005] (a) Notwithstanding IC 27-16-4-7, as added by this act, the department of insurance shall carry out the duties imposed upon it under IC 27-16-4-7 under interim written guidelines approved by the insurance commissioner.

(b) This SECTION expires on the earlier of the following:

- (1) The date rules are adopted under IC 27-16-4-7.
- (2) December 31, 2006.

SECTION 12. [EFFECTIVE JULY 1, 2005] (a) Notwithstanding IC 27-16-5-4, as added by this act, the department of insurance shall carry out the duties imposed upon it under IC 27-16-5-4 under interim written guidelines approved by the insurance commissioner.

(b) This SECTION expires on the earlier of the following:

- (1) The date rules are adopted under IC 27-16-5-4.
- (2) December 31, 2006.

SECTION 13. [EFFECTIVE JULY 1, 2005] (a) Notwithstanding IC 27-16-5-6, as added by this act, the department of insurance shall carry out the duties imposed upon it under IC 27-16-5-6 under interim written guidelines approved by the insurance commissioner.

(b) This SECTION expires on the earlier of the following:

- (1) The date rules are adopted under IC 27-16-5-6.
- (2) December 31, 2006."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1453 as printed March 25, 2005.)

RICHARDSON	CLARK
DICKINSON	LEWIS
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

## ACTION ON RULES SUSPENSIONS AND CONFERENCE COMMITTEE REPORTS

### Engrossed House Bill 1265-1

#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 18 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed House Bill 1265-1.

WHETSTONE, Chair

Report adopted.

#### HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 18 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed House Bill 1265-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 564: yeas 91, nays 0. Report adopted.

### Engrossed Senate Bill 233-1

#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 21 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 233-1.

WHETSTONE, Chair

Report adopted.

#### HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 21 hours, all so that the following conference committee report

may be eligible to be placed before the House for action: Engrossed Senate Bill 233-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 565: yeas 91, nays 0. Report adopted.

### Engrossed Senate Bill 379-1

#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 21 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 379-1.

WHETSTONE, Chair

Report adopted.

#### HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 21 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 379-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 566: yeas 91, nays 0. Report adopted.

Representative Ripley, who had been excused, was present.

### Engrossed Senate Bill 481-1

#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 19 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 481-1.

WHETSTONE, Chair

Report adopted.

#### HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 19 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 481-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 567: yeas 92, nays 0. Report adopted.

## MOTIONS TO CONCUR IN SENATE AMENDMENTS

### HOUSE MOTION

Mr. Speaker: I move that the House concur in the Senate amendments to Engrossed House Bill 1822.

AUSTIN

Roll Call 568: yeas 93, nays 0. Motion prevailed.

## RESOLUTIONS ON FIRST READING

### Senate Concurrent Resolution 71

The Speaker handed down Senate Concurrent Resolution 71, sponsored by Representatives Bauer and Walorski:

A CONCURRENT RESOLUTION congratulating the University of Notre Dame fencing team for winning the NCAA Fencing Championships.

*Whereas, with a 44-10 record that lifted their team past Ohio State, Notre Dame delivered the program's seventh national title;*

*Whereas, Notre Dame qualified only 11 of the maximum 12 total entrants (five men, six women) in the four-day event, but the Irish met the challenge, becoming the first fencing program ever to win the NCAA title without the full allotment of fencers;*

*Whereas, Notre Dame's six entrants in the women's portion of the NCAA Combined Fencing Championships lived up to their top-ranked billing;*

*Whereas, while Notre Dame's sabre dominance was clear for all to see, it was the effort of the epeeists that ultimately helped to capture the championship; and*

*Whereas, Ohio State held a 24-point lead over Notre Dame after the men's bouts had concluded, but the Irish women put on an impressive display winning several bouts in the closing rounds: Therefore,*

*Be it resolved by the Senate  
of the General Assembly of the State of Indiana,  
the House of Representatives concurring:*

SECTION 1. That the University of Notre Dame Fencing Team be congratulated for their dramatic victory in the NCAA Combined Fencing Championships.

SECTION 2. The Secretary of the Senate is hereby directed to transmit a copy of this resolution to Athletic Director Kevin White, Head Coach Janusz Bednarski, and Assistant Coach Zoltan Dudas.

The resolution was read a first time and adopted by voice vote. The Clerk was directed to inform the Senate of the passage of the resolution.

## CONFEREES AND ADVISORS APPOINTED

The Speaker announced the following changes in appointment of Representatives as conferees and advisors:

EHB 1057 Conferees: Richardson replacing Pelath

EHB 1666 Conferees: Whetstone replacing Alderman as Chair

## OTHER BUSINESS ON THE SPEAKER'S TABLE

### MESSAGE FROM THE GOVERNOR

Mr. Speaker and Members of the House: On April 26, 2005, I signed into law House Enrolled Acts 1217, 1325, and 1736.

MITCHELL E. DANIELS, JR.  
Governor

## Reassignments

The Speaker announced the reassignment of House Resolution 32 from the Committee on Courts and Criminal Code to the Committee on Rules and Legislative Procedures.

## CONFERENCE COMMITTEE REPORTS

### CONFERENCE COMMITTEE REPORT EHB 1329-1; filed April 26, 2005, at 4:24 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1329 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 4-20.5-6-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. The department and the office of the secretary of the family and social services administration shall establish policies that prohibit the construction of fences and bleachers on real property that is part of the Evansville State Hospital. This section covers real property used either by:

- (1) Evansville State Hospital for recreational purposes; or
- (2) an entity using part of the property of the hospital with the permission of the hospital.

SECTION 2. IC 4-20.5-7-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.5. (a) This section applies to real property that is part of Evansville State Hospital.

(b) The transfer of real property of Evansville State Hospital must include a provision that no fences or bleachers may be constructed on the real property being transferred. The deed transferring real property must include a provision that the real property reverts to the state if bleachers or fences are constructed on the real property.

SECTION 3. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "committee" refers to the Evansville State Hospital advisory committee established by this SECTION.

(b) As used in this SECTION, "hospital" refers to the Evansville State Hospital.

(c) The Evansville State Hospital advisory committee is established.

(d) The committee consists of the following members:

- (1) All members of the house of representatives who represent all or part of Vanderburgh County appointed by the speaker of the house of representatives.
- (2) All members of the senate who represent all or part of Vanderburgh County appointed by the president pro tempore of the senate.
- (3) The superintendent of the hospital or the superintendent's designee.
- (4) The presiding officer of the legislative body of the municipality in which the hospital is located or the presiding officer's designee.
- (5) The presiding officer of the legislative body of the county in which the hospital is located or the presiding officer's designee.
- (6) The head of the parks department of the municipality in which the hospital is located or the head of the parks department's designee.
- (7) An individual representing the Wesselman Nature Society board. The board shall notify the legislative services agency and the staff of the committee of the name of the individual representing the board.
- (8) An individual representing the county convention and visitor commission. The commission shall notify the legislative services agency and the staff of the committee of the name of the individual representing the commission.

(e) The chairman of the legislative council shall appoint the chairperson of the committee. After the chairperson of the committee is appointed, the vice chairman of the legislative council shall appoint the vice chairperson of the committee. The chairperson and the vice chairperson of the committee may not be members of the same political party.

(f) The committee shall meet on the call of the chairperson.

(g) Each legislative member of the committee is entitled to receive the same per diem, mileage, and travel allowances paid to individuals serving as legislative members on interim study committees established by the legislative council. All expenses under this SECTION shall be paid from appropriations made to the legislative services agency.

(h) Each member of the committee who is not a member of the general assembly is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). The member is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the member's duties as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

(i) The committee shall operate under policies and procedures established by the legislative council.

(j) The affirmative vote of a majority of the members appointed to the committee is required to take action on any measure.

(k) The division of mental health and addiction established by IC 12-21-1-1 shall provide staff services to the committee.

(l) The committee shall study proposed uses of the hospital property, including the existing historic buildings.

(m) This subsection does not apply to a transaction or the renewal of a transaction if the transaction was entered into before January 1, 1999, or to a transfer specifically authorized by statute. Before the state may:

- (1) sell, lease, or transfer possession of any part of the real property constituting the grounds of the hospital or make any determination concerning the siting of any new building or related parking facility to be constructed on the grounds of the hospital; or
- (2) enter into an agreement or contract for any transaction described in subdivision (1);

the governor must submit to the committee a detailed report describing the proposed transaction and the reasons for the proposed transaction. Upon receiving a report under this subsection, the chairperson of the committee shall call a meeting of the committee to act upon the report. The committee shall act upon the report and submit its recommendations to the governor not later than sixty (60) days after the governor submits the report. The state may not proceed with the transaction until the governor responds to the committee's recommendation.

(n) The transfer of any real property constituting the grounds of the hospital must include a provision that no fences or bleachers may be constructed on the real property being transferred. The deed transferring real property must include a provision that the real property reverts to the state if bleachers or fences are constructed on the real property.

(o) The committee shall continue the work done by the Evansville State Hospital advisory committee, which expired January 1, 2004.

(p) This SECTION expires January 1, 2007.

SECTION 4. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commissioner" refers to the commissioner of the Indiana department of administration.

(b) As used in this SECTION, "department" refers to the Indiana department of administration created by IC 4-13-1-2.

(c) As used in this SECTION, "grantee" refers to the Southwestern Indiana Master Gardener Association, Inc.

(d) As used in this SECTION, "real estate" refers to the real property located in Section 26, Township 6 South, Range 10 West in Knight Township, Vanderburgh County, Indiana, more particularly described as follows:

Commencing at the southwest corner of the northwest quarter of Section 26; thence along the west line of the quarter section, North 01 degree, 06 minutes, 58 seconds East 1686.80 feet to the southwest corner of a tract of land conveyed to the City of Evansville in Deed Drawer 11, card 9992 in the office of the Recorder of Vanderburgh County; thence along the boundary of the City of Evansville tract the following seven (7) calls:

South 86 degrees, 14 minutes, 29 seconds East 383.18 feet; thence



South 23 degrees, 15 minutes, 05 seconds East 99.07 feet; thence  
 South 57 degrees, 37 minutes, 45 seconds East 114.34 feet; thence  
 South 86 degrees, 17 minutes, 39 seconds East 127.75 feet; thence  
 North 00 degrees, 04 minutes, 06 seconds East 113.09 feet; thence  
 South 87 degrees, 28 minutes, 48 seconds East 61.01 feet; thence  
 North 09 degrees, 00 minutes, 19 seconds East 207.54 feet; to

the southwest corner of a tract of land conveyed to the Buffalo Trace Council, Inc. of the Boy Scouts of America in Document Number 2004R00010382 in the office of the Recorder of Vanderburgh County; thence along the boundary of the Boy Scout tract, South 88 degrees, 35 minutes, 04 seconds East 909.20 feet; thence continuing along the Boy Scout Tract, North 15 degrees, 07 minutes, 50 seconds East 75.92 feet to the point of beginning; thence continuing along the Boy Scout tract the following four (4) calls:

North 68 degrees, 20 minutes, 24 seconds West 198.16 feet; thence  
 North 00 degrees, 28 minutes, 12 seconds East 254.18 feet; thence  
 South 73 degrees, 53 minutes, 24 seconds East 195.17 feet; thence  
 South 06 degrees, 59 minutes, 24 seconds East 175.44 feet; thence

South 15 degrees, 07 minutes, 50 seconds West 102.58 feet to the point of beginning and containing a gross area of 1.208 acres.

(e) The governor and the commissioner are authorized and directed on behalf of and in the name of the state of Indiana to convey the real estate to the grantee. Except as provided in this SECTION, the conveyance of the real estate shall be made without consideration. Conveyance of the real estate is subject to the following:

- (1) Use of the real estate for educational, cultural, recreational, art, or museum purposes.
- (2) The rights of ingress and egress across existing roadways and parking lots as described in the quitclaim deed to the Buffalo Trace Council, Inc. of the Boy Scouts of America in Document Number 2004R00010382 in the office of the Recorder of Vanderburgh County.
- (3) The use of paths located on the real estate for biking, hiking, and other similar recreational activities.
- (4) Highways, easements, and restrictions of record.
- (5) No fences or bleachers may be constructed on the property.

(f) The real estate reverts to the state if the real estate is not used for the purposes described in subsection (e)(1).

(g) The conveyance of the real estate must comply with IC 4-20.5-7 to the extent that IC 4-20.5-7 does not conflict with this SECTION. The department shall have a quitclaim deed prepared to convey the real estate to the grantee. The deed must state the conditions and restrictions contained in subsections (e) and (f). The commissioner and the governor shall sign the deed, and the seal of the state shall be affixed to the deed.

(h) The grantee shall have the deed to the real estate recorded in Vanderburgh County, Indiana.

(i) The department shall inform the superintendent of Evansville State Hospital when the conveyance under this SECTION has been completed.

(j) SECTION 1 of this act does not apply to the conveyance required by this SECTION.

(k) This SECTION expires July 1, 2009.

SECTION 5. An emergency is declared for this act.

(Reference is to HB 1329 as reprinted April 6, 2005.)

BECKER	SERVER
AVERY	L. LUTZ
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

#### CONFERENCE COMMITTEE REPORT

EHB 1063-1; filed April 26, 2005, at 4:33 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1063 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT concerning property.

Delete everything after the enacting clause and insert the following:

SECTION 1. [EFFECTIVE JULY 1, 2005] (a) As used in this SECTION, "committee" refers to the interim study committee on eminent domain established by this SECTION.

(b) For the purposes of this SECTION, "commercial use" includes the following:

- (1) Private residential development or use of the property.
- (2) Private development of the property under a lease.
- (3) Use of the property for retail or industrial purposes.

(c) There is established the interim study committee on eminent domain. The committee shall study the use of eminent domain, especially where the proposed use of the property being acquired by eminent domain does not relate directly to providing a governmental service or fulfilling a governmental responsibility but is, rather, a commercial use.

(d) The committee shall study criteria that could be applied when the acquisition of property by eminent domain for a commercial use is proposed, including the following:

- (1) Minimum price offers to the owner of the real property.
- (2) Significance of promoting or retaining gainful employment.
- (3) Significance of business opportunities.
- (4) Whether the real property is located within an area in which normal development and occupancy are undesirable or impossible for the following reasons:
  - (A) Deterioration of improvements.
  - (B) Obsolescence.
  - (C) Substandard buildings.
  - (D) Excessive numbers of vacant, abandoned, or illegally used properties.
  - (E) Unsanitary or unsafe conditions.
  - (F) Life or property endangering conditions.
- (5) Any other issue assigned by the legislative council.

(e) The committee shall operate under the policies governing study committees adopted by the legislative council.

(f) The affirmative votes of a majority of the voting members appointed to the committee are required for the committee to take action on any measure, including final reports.

(g) This SECTION expires January 1, 2006.

(Reference is to EHB 1063 as reprinted April 6, 2005.)

WOLKINS	BRAY
E. HARRIS	LANANE
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

#### CONFERENCE COMMITTEE REPORT

ESB 242-1; filed April 26, 2005, at 4:42 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 242 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 9-29-10-2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2. (a) A person who is indigent may file a**

**petition for waiver of a fee for reinstatement of the person's driver's license in a criminal court of record in the person's county of residence.**

**(b) The clerk of the court shall forward a copy of the petition to the prosecuting attorney of the county and to the bureau. The prosecuting attorney may appear and be heard on the petition.**

**(c) The bureau is not a party in a proceeding under this chapter.**

SECTION 2. IC 9-29-10-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 3. (a) Upon its own motion, or upon a petition filed by a person under section 2 of this chapter, a court may waive a fee for reinstatement of a driver's license described in section 1 of this chapter if the court finds that:**

**(1) the person who owes the fee for reinstatement of the driver's license:**

**(A) is indigent; and**

**(B) has presented proof of future financial responsibility; and**

**(2) waiver of the fee for reinstatement of the driver's license is appropriate in light of the person's character and the nature and circumstances surrounding the person's license suspension.**

**(b) If a court waives a fee for reinstatement of a driver's license under this section, the court may impose other reasonable conditions on the person.**

**(c) If a court waives a fee for reinstatement of a driver's license under this section, the clerk shall forward a copy of the court's order to the bureau.**

SECTION 3. IC 9-30-5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 11. (a) If a court grants a person probationary driving privileges under section 12 of this chapter, the person may operate a vehicle only as follows:**

**(1) To and from the person's place of employment.**

**(2) For specific purposes in exceptional circumstances.**

**(3) To and from a court-ordered treatment program.**

**(b) If the court grants the person probationary driving privileges under section 12(a) of this chapter, that part of the court's order granting probationary driving privileges does not take effect until the person's driving privileges have been suspended for at least thirty (30) days under IC 9-30-6-9.**

**(c) The court shall notify a person who is granted probationary driving privileges of the following:**

**(1) That the probationary driving period commences when the bureau issues the probationary license.**

**(2) That the bureau may not issue a probationary license until the bureau receives a reinstatement fee from the person, if applicable, and the person otherwise qualifies for a license.**

SECTION 4. IC 9-30-6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 9. (a) This section does not apply if an ignition interlock device order is issued under section 8(d) of this chapter.**

**(b) If the affidavit under section 8(b) of this chapter states that a person refused to submit to a chemical test, the bureau shall suspend the driving privileges of the person:**

**(1) for one (1) year; or**

**(2) until the suspension is ordered terminated under IC 9-30-5.**

**(c) If the affidavit under section 8(b) of this chapter states that a chemical test resulted in prima facie evidence that a person was intoxicated, the bureau shall suspend the driving privileges of the person:**

**(1) for one hundred eighty (180) days; or**

**(2) until the bureau is notified by a court that the charges have been disposed of;**

**whichever occurs first.**

**(d) Whenever the bureau is required to suspend a person's driving privileges under this section, the bureau shall immediately do the following:**

**(1) Mail a notice to the person's last known address that must state that the person's driving privileges will be suspended for a specified period, commencing:**

**(A) five (5) days after the date of the notice; or**

**(B) on the date the court enters an order recommending suspension of the person's driving privileges under section 8(c) of this chapter;**

**whichever occurs first.**

**(2) Notify the person of the right to a judicial review under section 10 of this chapter.**

**(e) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this article is not subject to any administrative adjudication under IC 4-21.5.**

**(f) If a person is granted probationary driving privileges under IC 9-30-5 and the bureau has not received the probable cause affidavit described in section 8(b) of this chapter, the bureau shall suspend the person's driving privileges for a period of thirty (30) days. After the thirty (30) day period has elapsed, the bureau shall, upon receiving a reinstatement fee, if applicable, from the person who was granted probationary driving privileges, issue the probationary license if the person otherwise qualifies for a license.**

**(g) If the bureau receives an order granting probationary driving privileges to a person who has a prior conviction for operating while intoxicated, the bureau shall do the following:**

**(1) Issue the person a probationary license and notify the prosecuting attorney of the county from which the order was received that the person is not eligible for a probationary license.**

**(2) Send a certified copy of the person's driving record to the prosecuting attorney.**

The prosecuting attorney shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order. If the bureau does not receive a corrected order within sixty (60) days, the bureau shall notify the attorney general, who shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order.

SECTION 5. IC 9-30-11-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 6. The bureau shall reinstate motor vehicle registration that is suspended under this chapter if the following occur:**

**(1) Any person presents the bureau or a bureau license branch with adequate proof that all unpaid judgments with respect to the motor vehicle have been paid.**

**(2) A reinstatement fee under IC 9-29 is paid to the bureau, if applicable.**

SECTION 6. IC 9-30-12-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2. The bureau may:**

**(1) reinstate a license or permit revoked or suspended under section 1 of this chapter; or**

**(2) revalidate a title or registration that has been invalidated under section 3 of this chapter;**

**if the obligation has been satisfied, including the payment of service, collection, and reinstatement fees, if applicable.**

(Reference is to ESB 242 as reprinted March 25, 2005.)

LONG	MESSER
HOWARD	MAHERN
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

The House recessed until the fall of the gavel.

## RECESS

The House reconvened at 6:55 p.m. with the Speaker in the Chair.

Representatives Behning and Hinkle, who had been excused, were present. Representatives Denbo and Mays were excused for the rest of the day.

## HOUSE MOTION

Mr. Speaker: I move that when we do adjourn, we adjourn until Wednesday, April 27, 2005 at 10:00 a.m.

T. HARRIS

Motion prevailed.

## CONFERENCE COMMITTEE REPORTS

### CONFERENCE COMMITTEE REPORT ESB 615-1; filed April 26, 2005, at 5:05 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 615 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 12-10-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The board consists of the following ~~nine (9)~~ **fifteen (15)** members:

- (1) The director of the division of family and children or the director's designee.
- (2) The chairman of the Indiana state commission on aging or the chairman's designee.
- (3) ~~Two (2)~~ **Three (3)** citizens at least sixty (60) years of age, nominated by ~~one (1)~~ **two (2)** or more organizations that:
  - (A) represent senior citizens; and
  - (B) have statewide membership.
- (4) One (1) citizen less than sixty (60) years of age nominated by one (1) or more organizations that:
  - (A) represent individuals with disabilities; and
  - (B) have statewide membership.
- (5) One (1) citizen less than sixty (60) years of age nominated by one (1) or more organizations that:
  - (A) represent individuals with mental illness; and
  - (B) have statewide membership.
- (6) One (1) provider who provides services under IC 12-10-10.
- (7) One (1) licensed physician, nurse, or nurse practitioner who specializes either in the field of gerontology or in the field of disabilities.
- (8) ~~One (1)~~ **Two (2)** home care services ~~advocate~~ **advocates** or policy ~~specialist~~ **specialists** nominated by ~~one (1)~~ **two (2)** or more:
  - (A) organizations;
  - (B) associations; or
  - (C) nongovernmental agencies;

that advocate on behalf of home care consumers, **including an organization listed in subdivision (3) that represents senior citizens or persons with disabilities.**

**(9) Two (2) members of the senate, who may not be members of the same political party, appointed by the president pro tempore of the senate with the advice of the minority leader of the senate.**

**(10) Two (2) members of the house of representatives, who may not be members of the same political party, appointed by the speaker of the house of representatives with the advice of the minority leader of the house of representatives.**

**The members of the board listed in subdivisions (9) and (10) are nonvoting members.**

(b) The members of the board designated by subsection (a)(3) through (a)(8) shall be appointed by the governor for terms of two (2) years. In case of a vacancy, the governor shall appoint an individual to serve for the remainder of the unexpired term.

(c) The division shall establish notice and selection procedures to notify the public of the board's nomination process described in this chapter. Information must be distributed through:

- (1) the area agencies on aging; and
- (2) all organizations, associations, and nongovernmental agencies that work with the division on home care issues and programs.

SECTION 2. IC 12-10-11-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. The board shall do the following:

(1) Establish long term goals of the state for the provision of a continuum of care for the elderly and disabled based on the following:

- (A) Individual independence, dignity, and privacy.

(B) Long term care services that are:

- (i) integrated, accessible, and responsible; and
- (ii) available in home and community settings.

(C) Individual choice in planning and managing long term care.

(D) Access to an array of long term care services:

- (i) for an individual to receive care that is appropriate for the individual's needs; and
- (ii) to enable a case manager to have cost effective alternatives available in the construction of care plans and the delivery of services.

(E) Long term care services that include home care, community based services, assisted living, congregate care, adult foster care, and institutional care.

(F) Maintaining an individual's dignity and self-reliance to protect the fiscal interests of both taxpayers and the state.

(G) Long term care services that are fiscally sound.

(2) Review state policies on community and home care services.

(3) Recommend the adoption of rules under IC 4-22-2.

(4) Recommend legislative changes affecting community and home care services.

(5) Recommend the coordination of the board's activities with the activities of other boards and state agencies concerned with community and home care services.

(6) Evaluate cost effectiveness, quality, scope, and feasibility of a state administered system of community and home care services.

(7) Evaluate programs for financing services to those in need of a continuum of care.

(8) Evaluate state expenditures for community and home care services, taking into account efficiency, consumer choice, competition, and equal access to providers.

(9) Develop policies that support the participation of families and volunteers in meeting the long term care needs of individuals.

(10) Encourage the development of funding for a continuum of care from private resources, including insurance.

(11) Develop a cost of services basis and a program of cost reimbursement for those persons who can pay all or a part of the cost of the services rendered. The division shall use this cost of services basis and program of cost reimbursement in administering IC 12-10-10. The cost of services basis and program of cost reimbursement must include a client cost share formula that:

(A) imposes no charges for an eligible individual whose income does not exceed one hundred fifty percent (150%) of the federal income poverty level; and

(B) does not impose charges for the total cost of services provided to an individual under the community and home options to institutional care for the elderly and disabled program unless the eligible individual's income exceeds three hundred fifty percent (350%) of the federal income poverty level.

The calculation of income for an eligible individual must include the deduction of the individual's medical expenses and the medical expenses of the individual's spouse and dependent children who reside in the eligible individual's household.

(12) Establish long term goals for the provision of guardianship services for adults.

(13) Coordinate activities and programs with the activities of other boards and state agencies concerning the provision of guardianship services.

(14) Recommend statutory changes affecting the guardianship of indigent adults.

**(15) Review a proposed rule concerning home and community based services as required under section 9 of this chapter.**

SECTION 3. IC 12-10-11-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 9. (a) The board shall be given the opportunity to review a proposed rule concerning home and community based services for:**

- (1) elderly individuals; or**

(2) individuals with disabilities;  
at least three (3) months before a proposed rule may be published in the Indiana Register.

(b) If the proposing agency fails to give the board the opportunity to review a proposed rule described in subsection (a), the rule:

(1) is void; and

(2) must be withdrawn by the proposing agency.

(c) The board may determine that the proposed rule reviewed by the board under this section should be subject to a public comment period. If the board makes a determination that a public comment period is necessary, the board shall set the:

(1) date and time;

(2) location; and

(3) format;

of the public comment period for the proposed rule.

(d) After a public hearing, if the board determines that a proposed rule is substantially out of compliance with state law governing home and community based services, the board shall request that the agency proposing the rule modify or withdraw the proposed rule. If a proposed rule is modified under this subsection, the modified rule must be reviewed by the board.

SECTION 4. P.L.274-2003, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: SECTION 7. (a) As used in this SECTION, "board" refers to the community and home options to institutional care for the elderly and disabled board established by IC 12-10-11-1.

(b) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established by IC 12-8-6-1.

(c) As used in this SECTION, "waiver" refers to the aged and disabled Medicaid waiver.

(d) Before September 1, 2003, the office shall discuss and review any amendment to the waiver required under this SECTION with the board.

(e) Before October 1, ~~2003~~, **2005**, the office shall apply to the United States Department of Health and Human Services to amend the waiver to include in the waiver any service that is offered under the community and home options to institutional care for the elderly and disabled (CHOICE) program established by IC 12-10-10-6. A service provided under this subsection may not be more restrictive than the corresponding service provided under IC 12-10-10.

(f) The office may not implement the waiver until the office files an affidavit with the governor attesting that the amendment to the waiver applied for under this SECTION is in effect. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the waiver is approved.

(g) If the office receives approval for the amendment to the waiver under this SECTION from the United States Department of Health and Human Services and the governor receives the affidavit filed under subsection (f), the office shall implement the waiver not more than sixty (60) days after the governor receives the affidavit.

(h) Before January 1, ~~2004~~, **2006**, the office shall meet with the board to discuss any changes to other state Medicaid waivers that are necessary to provide services that may not be more restrictive than the services provided under the CHOICE program. The office shall recommend the changes determined necessary by this subsection to the governor.

(i) The office may adopt rules under IC 4-22-2 necessary to implement this SECTION.

(j) This SECTION expires July 1, ~~2008~~, **2010**.

SECTION 5. P.L.274-2003, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: SECTION 8. (a) As used in this SECTION, "office" refers to the office of Medicaid policy and planning established by IC 12-8-6-1.

(b) As used in this SECTION, "waiver" refers to a Medicaid waiver approved by the United States Department of Health and Human Services (42 U.S.C. 1396 et seq.).

(c) Before September 1, ~~2003~~, **2005**, the office shall seek approval from the United States Department of Health and Human Services to amend the waiver to modify income eligibility requirements to include spousal impoverishment protection provisions under 42 U.S.C. 1396r-5 that are at least at the level of the spousal impoverishment protections afforded to individuals who reside in

health facilities licensed under IC 16-28. The office also shall seek approval for twenty thousand (20,000) additional waiver slots at no additional cost to the state.

(d) The office may not implement the waiver amendments until the office files an affidavit with the governor attesting that the federal waiver amendment applied for under this SECTION is in effect. The office shall file the affidavit under this subsection not later than five (5) days after the office is notified that the waiver amendment is approved.

(e) If the United States Department of Health and Human Services approves the waiver amendment requested under this SECTION and the governor receives the affidavit filed under subsection (d), the office shall implement the waiver amendments not more than sixty (60) days after the governor receives the affidavit.

(f) The office may adopt rules under IC 4-22-2 necessary to implement this SECTION.

(g) This SECTION expires July 1, ~~2008~~, **2010**.

SECTION 6. P.L.274-2003, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: SECTION 10. (a) As used in this SECTION, "office" refers to the office of the secretary of family and social services established by IC 12-8-1-1.

(b) Before July 1, ~~2004~~, **2006**, the office shall have self-directed care options services available for:

(1) the community and home options to institutional care for the elderly and disabled program established by IC 12-10-10-6; and

(2) a Medicaid waiver;

for an eligible individual who chooses self-directed care services.

(c) This SECTION expires December 31, ~~2006~~, **2008**.

SECTION 7. P.L.274-2003, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: SECTION 12. (a) Before December 31, ~~2003~~, **2005**, the secretary of family and social services (IC 12-8-1-2) shall discuss with the community and home options to institutional care for the elderly and disabled (CHOICE) board established by IC 12-10-11-1, and with any other agency, volunteer, volunteer group, faith based group, or individual that the secretary considers appropriate, the establishment of a system of integrated services, including:

(1) transportation;

(2) housing;

(3) education; and

(4) workforce development;

to enhance the viability and availability of home and community based care.

(b) The secretary shall report to the governor and the budget committee any recommendations for funding these services.

(c) This SECTION expires December 31, ~~2004~~, **2006**.

SECTION 8. P.L.274-2003, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: SECTION 14. (a) Beginning July 1, 2003, the office of Medicaid policy and planning shall implement a policy that allows the amount of Medicaid funds necessary to provide for services to follow an individual who is transferring from institutional care to Medicaid home and community based care. The amount may not exceed the amount that would have been spent on the individual if the individual had stayed in institutional care.

(b) This SECTION expires July 1, ~~2005~~, **2007**.

SECTION 9. **An emergency is declared for this act.**

(Reference is to ESB 615 as reprinted March 23, 2005.)

SERVER

BECKER

ROGERS

C. BROWN

Senate Conferees

House Conferees

The conference committee report was filed and read a first time.

#### CONFERENCE COMMITTEE REPORT EHB 1794-1; filed April 26, 2005, at 6:13 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1794 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 9-24-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A driver's license or a learner's permit may not be issued to an individual less than eighteen (18) years of age who meets any of the following conditions:

- (1) Is a habitual truant under ~~IC 20-8.1-3-17-2~~; **IC 20-33-2-11.**
- (2) Is under at least a second suspension from school for the school year under ~~IC 20-8.1-5.1-8~~ **IC 20-33-8-14** or ~~IC 20-8.1-5.1-9~~; **IC 20-33-8-15.**
- (3) Is under an expulsion from school under ~~IC 20-8.1-5.1-8~~, ~~IC 20-8.1-5.1-9~~, or ~~IC 20-8.1-5.1-10~~; **IC 20-33-8-14, IC 20-33-8-15, or IC 20-33-8-16.**
- (4) ~~Has withdrawn from school, for a reason other than financial hardship and the withdrawal was reported under IC 20-8.1-3-24(a) before graduating.~~
- (4) **Is considered a dropout under IC 20-33-2-28.5.**
- (b) At least five (5) days before holding an exit interview under ~~IC 20-8.1-3-17(b)(2)~~; **IC 20-33-2-28.5**, the school corporation shall give notice by certified mail or personal delivery to the student, the student's parent, or the student's guardian of the following:
  - (1) ~~That the exit interview will include a hearing to determine if the reason for the student's withdrawal is financial hardship.~~
  - (2) ~~If the principal determines that the reason for the student's withdrawal is not financial hardship:~~
    - (A) ~~the student and the student's parent or guardian will receive a copy of the determination; and~~
    - (B) ~~the student's name will be submitted to the bureau for the bureau's use in denying or invalidating a driver's license or learner's permit under this section.~~

**that the student's failure to attend an exit interview under IC 20-33-2-28.5 or return to school if the student does not meet the requirements to withdraw from school under IC 20-33-2-28.5 will result in the revocation or denial of the student's:**

- (1) **driver's license or learner's permit; and**
- (2) **employment certificate.**

SECTION 2. IC 20-1-1.1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The department shall:

- (1) perform the duties required by statute;
- (2) implement the policies and procedures established by the board;
- (3) conduct analytical research to assist the state board of education in determining the state's educational policy;
- (4) compile statistics concerning the ethnicity, ~~and~~ gender, ~~and~~ **disability status** of students in Indiana schools, including statistics for all information that the department receives from school corporations on enrollment, number of suspensions, and number of expulsions; and
- (5) provide technical assistance to school corporations.
- (b) **The department, in compiling statistics under subsection (a)(4), must categorize suspensions and expulsions by ethnicity, gender, disability status, and cause as follows:**
  - (1) **Alcohol.**
  - (2) **Drugs.**
  - (3) **Deadly weapons (other than firearms).**
  - (4) **Handguns.**
  - (5) **Rifles or shotguns.**
  - (6) **Other firearms.**
  - (7) **Tobacco.**
  - (8) **Attendance.**
  - (9) **Destruction of property.**
  - (10) **Legal settlement (under IC 20-8.1-5.1-11).**
  - (11) **Fighting (incident does not rise to the level of battery).**
  - (12) **Battery (IC 35-42-2-1).**
  - (13) **Intimidation (IC 35-45-2-1).**
  - (14) **Verbal aggression or profanity.**
  - (15) **Defiance.**
  - (16) **Other.**
- (c) **The department shall develop guidelines necessary to implement this section.**

SECTION 3. IC 20-8.1-5.1-7 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) The governing body of a school corporation must do the following:

- (1) Establish written discipline rules, which may include:
  - (A) appropriate dress codes; **and**
  - (B) **if applicable, an agreement for court assisted resolution of school suspension and expulsion cases;**
 for the school corporation.
- (2) Give general publicity to the discipline rules within a school where the discipline rules apply by actions such as:
  - (A) making a copy of the discipline rules available to students and students' parents; or
  - (B) delivering a copy of the discipline rules to students or the parents of students.
 This publicity requirement may not be construed technically and is satisfied in any case when the school corporation makes a good faith effort to disseminate to students or parents generally the text or substance of a discipline rule.
- (b) The superintendent of a school corporation and the principals of each school in a school corporation may adopt regulations establishing lines of responsibility and related guidelines in compliance with the discipline policies of the governing body.
- (c) The governing body of a school corporation may delegate rule making, disciplinary, and other authority as reasonably necessary to carry out the school purposes of the school corporation.
- (d) Subsection (a) does not apply to rules or directions concerning the following:

- (1) Movement of students.
- (2) Movement or parking of vehicles.
- (3) Day-to-day instructions concerning the operation of a classroom or teaching station.
- (4) Time for commencement of school.
- (5) Other standards or regulations relating to the manner in which an educational function must be administered.

However, this subsection does not prohibit the governing body from regulating the areas listed in this subsection.

SECTION 4. IC 20-8.1-5.2 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

#### **Chapter 5.2. Court Assisted Resolution of Suspension and Expulsion Cases**

**Sec. 1. This chapter does not apply to a nonpublic school.**

**Sec. 2. A superintendent and a court having juvenile jurisdiction in the county may enter into a voluntary agreement (referred to as the "agreement" in this chapter) for court assisted resolution of school suspension and expulsion cases. The agreement may require the court to supervise or provide for the supervision of an expelled or suspended student who has been referred to the court by the school corporation in accordance with the terms of the agreement.**

**Sec. 3. The agreement may require that a court do one (1) or more of the following:**

- (1) Establish a flexible program for the supervision of a student who has been suspended or expelled.
- (2) Supervise a student who has been suspended or expelled.
- (3) Require a student who has been suspended or expelled to participate in a school program (including an alternative educational program) for the supervision of a student who has been suspended or expelled.

**Sec. 4. (a) The agreement may require that a school corporation do one (1) or more of the following:**

- (1) Define the violation for which a student who has been suspended or expelled shall be referred to the court.
- (2) Refer a student who has been suspended or expelled for a violation described in subdivision (1) to the court.
- (3) Establish a school program (including an alternative educational program) for the supervision of a student who has been suspended or expelled.

**(b) If a school corporation enters into an agreement, the discipline rules adopted by the school corporation under IC 20-8.1-5.1-7 must specify the violations for which a student may be referred to the court under the agreement.**

**Sec. 5. The agreement must provide how the expenses of supervising a student who has been suspended or expelled are**

funded. A school corporation may not be required to expend more than the amount determined under IC 21-3-1.7-6.7(e) for each student referred under the agreement.

Sec. 6. A student shall be given an informal hearing before the court, in a setting agreed upon by the court and the school board, as soon as practicable following the student's referral to the court, after notice of the hearing has been provided to the student's parent.

Sec. 7. A hearing under this chapter is not a hearing to determine whether a student who has been suspended or expelled is a child in need of services. However, if a court determines that a student who has been suspended or expelled may:

- (1) be a child in need of services (as described in IC 31-34-1); or
- (2) have committed a delinquent act (as described in IC 31-37);

the court may notify the office of family and children or the prosecuting attorney.

Sec. 8. A parent or guardian has the right to be present, and may be required to be present, during the student's appearance.

Sec. 9. A student's appearance in court under this chapter shall not be used against the child or the child's parents or guardians in any subsequent court proceeding, including but not limited to any delinquency or child in need of services matter under IC 31.

Sec. 10. All records of the student's court appearance shall be expunged upon the student's completion of the out-of-school suspension or expulsion program.

Sec. 11. Notwithstanding the terms of the agreement, a suspension, an expulsion, or a referral of a student who is a child with a disability (as defined in IC 20-1-6-1) is subject to the:

- (1) procedural requirements of 20 U.S.C. 1415; and
- (2) rules adopted by the Indiana state board of education.

Sec. 12. This chapter does not deprive a child of any due process rights to which the child may be entitled.

SECTION 5. IC 20-8.1-15-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. The graduation rate for a cohort in a high school is the percentage determined under STEP SEVEN of the following formula:

STEP ONE: Determine the grade 9 enrollment at the beginning of the reporting year three (3) years before the reporting year for which the graduation rate is being determined.

STEP TWO: Add:

- (A) the number determined under STEP ONE; and
- (B) the number of students who:
  - (i) have enrolled in the high school after the date on which the number determined under STEP ONE was determined; and
  - (ii) have the same expected graduation year as the cohort.

STEP THREE: Add:

- (A) the sum determined under STEP TWO; and
- (B) the number of retained students from earlier cohorts who became members of the cohort for whom the graduation rate is being determined.

STEP FOUR: Add:

- (A) the sum determined under STEP THREE; and
- (B) the number of students who:
  - (i) began the reporting year in a cohort that expects to graduate during a future reporting year; and
  - (ii) graduate during the current reporting year.

STEP FIVE: Subtract from the sum determined under STEP FOUR the number of students who have left the cohort for any of the following reasons:

- (A) Transfer to another public or nonpublic school.
- (B) Removal by the student's parents under IC 20-8.1-3-34 to provide instruction equivalent to that given in the public schools.
- (C) Withdrawal because of a long term medical condition or death.
- (D) Detention by a law enforcement agency or the department of correction.
- (E) Placement by a court order or the division of family and children.
- (F) Enrollment in a virtual school.

(G) Graduation before the beginning of the reporting year.

(H) Students who ~~have left school and whose location cannot be determined~~ attended school in Indiana for less than one (1) school year and who cannot be located.

(I) Students who cannot be located and have been reported to the Indiana clearinghouse for information on missing children.

(J) High ability students (as defined in IC 20-10.1-5.1-2) who have withdrawn from school before graduation and are full-time students in an accredited institution of higher education during the semester in which the cohort graduates.

STEP SIX: Determine the total number of students who have graduated during the current reporting year.

STEP SEVEN: Divide:

- (A) the number determined under STEP SIX; by
- (B) the remainder determined under STEP FIVE.

SECTION 6. IC 20-8.1-15-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) If a student has left the school, the student is not included in clauses (A) through (J) of STEP FIVE of the formula established in section 10 of this chapter. If the location of the student is unknown to the school, the principal shall send a certified letter to the last known address of the student, inquiring about the student's whereabouts and status. If the student is not located after the certified letter is delivered or if no response is received, the principal may submit the student's information, including last known address, parent or guardian name, student testing number, and other pertinent data to the state attendance officer. The state attendance officer, using all available state data and any other means available, shall attempt to locate the student and report the student's location and school enrollment status to the principal so that the principal can appropriately send student records to the new school or otherwise document the student's status.

(b) If a school corporation cannot provide written proof that a student should be included in clauses (A) through (J) of STEP FIVE of section 10 of this chapter, the student is considered a dropout.

SECTION 7. IC 20-8.1-15-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. For each high school, the department shall calculate an estimated graduation rate that is determined by the total number of graduates for the reporting year divided by the total number of students enrolled in grade 9 at the school three (3) years before the reporting year. For any school where the difference between the estimated graduation rate and the number determined under STEP SEVEN of section 10 of this chapter is more than five percent (5%), the department shall request the data used in determining that the missing students are classified under one (1) or more of clauses (A) through (J) of STEP FIVE of section 10 of this chapter.

SECTION 8. IC 20-8.1-15-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. For any school that cannot provide written proof supporting the school's determinations to include a student under clauses (A) through (J) of STEP FIVE of section 10 of this chapter, the department shall require the publication of the corrected graduation rate in the next school year's report required under IC 20-1-21-4.

SECTION 9. IC 20-10.1-22.4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) As used in this section, "juvenile justice agency" has the meaning set forth in IC 10-13-4-5.

(b) A school corporation or other entity to which the education records privacy provisions of the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g) apply may disclose or report on the education records of a child, including personally identifiable information contained in the education records, without the consent of the child's parent, guardian, or custodian, under the following conditions:

- (1) The disclosure or reporting of education records is to a state or local juvenile justice agency.

(2) The disclosure or reporting relates to the ability of the juvenile justice system to serve, before adjudication, the student whose records are being released.

(3) The juvenile justice agency receiving the information certifies, in writing, to the entity providing the information that the agency or individual receiving the information has agreed not to disclose it to a third party, other than another juvenile justice agency, without the consent of the child's parent, guardian, or custodian.

(c) For purposes of subsection (b)(2), a disclosure or reporting of education records concerning a child who has been adjudicated as a delinquent child shall be treated as related to the ability of the juvenile justice system to serve the child before adjudication if the juvenile justice agency seeking the information provides sufficient information to enable the keeper of the education records to determine that the juvenile justice agency seeks the information in order to identify and intervene with the child as a juvenile at risk of delinquency rather than to obtain information solely related to supervision of the child as an adjudicated delinquent child.

**(d) A school corporation to which the education records privacy provisions of the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g) apply may disclose or report on the education records of a child, including personally identifiable information contained in the education records, without the consent of the child's parent, guardian, or custodian, if the child has been suspended or expelled and referred to a court in accordance with an agreement for court assisted resolution of suspension and expulsion cases under IC 20-8.1-5.2. The request for the education records of a child by a court must be for the purpose of assisting the child before adjudication.**

**(e) A school corporation or other entity to which the education records privacy provisions of the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g) apply that:**

(1) discloses or reports on the education records of a child, including personally identifiable information contained in the education records, in violation of this section; and

(2) makes a good faith effort to comply with this section;

is immune from civil liability.

SECTION 10. IC 20-19-3-4, AS ADDED BY HEA 1288-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. **(a)** The department shall:

(1) perform the duties required by statute;

(2) implement the policies and procedures established by the state board;

(3) conduct analytical research to assist the state board in determining the state's educational policy;

(4) compile statistics concerning the ethnicity, ~~and~~ gender, ~~and~~ **disability status** of students in Indiana schools, including statistics for all information that the department receives from school corporations on enrollment, number of suspensions, and number of expulsions; and

(5) provide technical assistance to school corporations.

**(b) In compiling statistics by gender, ethnicity, and disability status under subsection (a)(4), the department shall also categorize suspensions and expulsions by cause as follows:**

**(1) Alcohol.**

**(2) Drugs.**

**(3) Deadly weapons (other than firearms).**

**(4) Handguns.**

**(5) Rifles or shotguns.**

**(6) Other firearms.**

**(7) Tobacco.**

**(8) Attendance.**

**(9) Destruction of property.**

**(10) Legal settlement (under IC 20-33-8-17).**

**(11) Fighting (incident does not rise to the level of battery).**

**(12) Battery (IC 35-42-2-1).**

**(13) Intimidation (IC 35-45-2-1).**

**(14) Verbal aggression or profanity.**

**(15) Defiance.**

**(16) Other.**

**(c) The department shall develop guidelines necessary to implement this section.**

SECTION 11. IC 20-26-13-10, AS ADDED BY HEA 1288-2005, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. **Except as provided in section 11 of this chapter,** the graduation rate for a cohort in a high school is the percentage determined under STEP SEVEN of the following formula:

STEP ONE: Determine the grade 9 enrollment at the beginning of the reporting year three (3) years before the reporting year for which the graduation rate is being determined.

STEP TWO: Add:

(A) the number determined under STEP ONE; and

(B) the number of students who:

(i) have enrolled in the high school after the date on which the number determined under STEP ONE was determined; and

(ii) have the same expected graduation year as the cohort.

STEP THREE: Add:

(A) the sum determined under STEP TWO; and

(B) the number of retained students from earlier cohorts who became members of the cohort for whom the graduation rate is being determined.

STEP FOUR: Add:

(A) the sum determined under STEP THREE; and

(B) the number of students who:

(i) began the reporting year in a cohort that expects to graduate during a future reporting year; and

(ii) graduate during the current reporting year.

STEP FIVE: Subtract from the sum determined under STEP FOUR the number of students who have left the cohort for any of the following reasons:

(A) Transfer to another public or nonpublic school.

(B) Removal by the student's parents under IC 20-33-2-28 to provide instruction equivalent to that given in the public schools.

(C) Withdrawal because of a long term medical condition or death.

(D) Detention by a law enforcement agency or the department of correction.

(E) Placement by a court order or the division of family and children.

(F) Enrollment in a virtual school.

(G) Graduation before the beginning of the reporting year.

(H) Leaving school, if the **student attended school in Indiana for less than one (1) school year and the location of the student cannot be determined.**

**(I) Leaving school, if the location of the student cannot be determined and the student has been reported to the Indiana clearinghouse for information on missing children.**

**(J) Withdrawing from school before graduation, if the student is a high ability student (as defined in IC 20-36-1-3) who is a full-time student at an accredited institution of higher education during the semester in which the cohort graduates.**

STEP SIX: Determine the total number of students who have graduated during the current reporting year.

STEP SEVEN: Divide:

(A) the number determined under STEP SIX; by

(B) the remainder determined under STEP FIVE.

SECTION 12. IC 20-26-13-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. **(a) A student who has left school is not included in clauses (A) through (J) of STEP FIVE of the formula established in section 10 of this chapter unless the school corporation can provide written proof that the student has left the school for one (1) of the reasons set forth in clauses (A) through (J) of STEP FIVE of section 10 of this chapter. If the location of the student is unknown to the school, the principal of the school shall send a certified letter to the last known address of the student, inquiring about the student's whereabouts and status. If the student is not located after the certified letter is delivered or if no response is received, the principal may submit the student's information, including last known address, parent**



or guardian name, student testing number, and other pertinent data to the state attendance officer. The state attendance officer, using all available state data and any other means available, shall attempt to locate the student and report the student's location and school enrollment status to the principal so that the principal can appropriately send student records to the new school or otherwise document the student's status.

(b) If a school corporation cannot provide written proof that a student should be included in clauses (A) through (J) of STEP FIVE of section 10 of this chapter, the student is considered a dropout.

SECTION 13. IC 20-26-13-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. For each high school, the department shall calculate an estimated graduation rate that is determined by the total number of graduates for the reporting year divided by the total number of students enrolled in grade 9 at the school three (3) years before the reporting year. For any school where the difference between the estimated graduation rate and the number determined under STEP SEVEN of section 10 of this chapter is more than five percent (5%), the department shall request the data used in determining that the missing students are classified under one (1) or more of clauses (A) through (J) of STEP FIVE of section 10 of this chapter.

SECTION 14. IC 20-26-13-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. For any school that cannot provide written proof supporting the school's determination to include a student under any one (1) of clauses (A) through (J) of STEP FIVE of section 10 of this chapter, the department shall require the publication of the corrected graduation rate in the next school year's report required under IC 20-20-8-3.

SECTION 15. IC 20-30-2-2, AS ADDED BY HEA 1288-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) A student instructional day in grades 1 through 6 consists of at least five (5) hours of instructional time. Except as provided in subsection (b), a student instructional day in grades 7 through 12 consists of at least six (6) hours of instructional time.

(b) An instructional day for a school flex program under section 2.2 of this chapter consists of a minimum of three (3) hours of instructional time.

SECTION 16. IC 20-30-2-2.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.2. (a) As used in this section, "eligible student" means a student in grade 11 or 12 who has:

- (1) failed the ISTEP+ graduation exam at least twice;
- (2) been determined to be chronically absent, by missing more than ten (10) unexcused days of school in one (1) school year;
- (3) been determined to be a habitual truant, as identified under IC 20-33-2-11;
- (4) been significantly behind in credits for graduation, as identified by an individual's school principal;
- (5) previously undergone at least a second suspension from school for the school year under IC 20-33-8-14 or IC 20-33-8-15;
- (6) previously undergone an expulsion from school under IC 20-33-8-14, IC 20-33-8-15, or IC 20-33-8-16; or
- (7) been determined by the individual's principal and the individual's parent or guardian to benefit by participating in the school flex program.

(b) An eligible student who participates in a school flex program must:

- (1) attend school for at least three (3) hours of instructional time per school day;
- (2) pursue a timely graduation;
- (3) provide evidence of college or technical career education enrollment and attendance or proof of employment and labor that is aligned with the student's career academic sequence under rules established by the Indiana bureau of child labor;
- (4) not be suspended or expelled while participating in a

school flex program;

(5) pursue course and credit requirements for a general diploma; and

(6) maintain a ninety-five percent (95%) attendance rate.

(c) A school may allow an eligible student in grade 11 or 12 to complete an instructional day that consists of three (3) hours of instructional time if the student participates in the school flex program.

(d) If one (1) or more students participate in a school flex program, the principal shall, on forms provided by the department, submit a yearly report to the department of student participation and graduation rates of students who participate in the school flex program.

SECTION 17. IC 20-33-2-9, AS ADDED BY HEA-1288-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A student is bound by the requirements of this chapter from the earlier of the date on which the student officially enrolls in a school or, except as provided in section 8 of this chapter, the beginning of the fall school term for the school year in which the student becomes seven (7) years of age until the date on which the student:

- (1) graduates;
- (2) becomes eighteen (18) years of age; or
- (3) becomes sixteen (16) years of age but is less than eighteen (18) years of age and the requirements under section 9 of this chapter concerning an exit interview are met enabling the student to withdraw from school before graduation;

whichever occurs first.

(b) A student who:

- (1) enrolls in school before the fall school term for the school year in which the student becomes seven (7) years of age; and
- (2) is withdrawn from school before the school year described in subdivision (1) occurs;

is not subject to the requirements of this chapter until the student is reenrolled as required in subsection (a). This chapter shall not be construed to require that a student complete grade 1 before the student becomes eight (8) years of age.

SECTION 18. IC 20-33-2-11, AS ADDED BY HEA-1288-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) Notwithstanding IC 9-24 concerning the minimum requirements for qualifying for the issuance of an operator's license or a learner's permit, and subject to subsections (c) through (e), an individual who is:

- (1) at least thirteen (13) years of age but less than fifteen (15) years of age;
- (2) a habitual truant under the definition of habitual truant established under subsection (b); and
- (3) identified in the information submitted to the bureau of motor vehicles under subsection (f);

may not be issued an operator's license or a learner's permit to drive a motor vehicle under IC 9-24 until the individual is at least eighteen (18) years of age.

(b) Each governing body shall establish and include as part of the written copy of its discipline rules described in IC 20-33-8-12:

- (1) a definition of a child who is designated as a habitual truant, which must, at a minimum, define the term as a student who is chronically absent, by having unexcused absences from school for more than ten (10) days of school in one (1) school year;
- (2) the procedures under which subsection (a) will be administered; and
- (3) all other pertinent matters related to this action.

(c) An individual described in subsection (a) is entitled to the procedure described in IC 20-33-8-19.

(d) An individual described in subsection (a) who is at least thirteen (13) years of age and less than eighteen (18) years of age is entitled to a periodic review of the individual's attendance record in school to determine whether the prohibition described in subsection (a) shall continue. The periodic reviews may not be conducted less than one (1) time each school year.

(e) Upon review, the governing body may determine that the individual's attendance record has improved to the degree that the individual may become eligible to be issued an operator's license or

a learner's permit.

(f) Before:

- (1) February 1; and
- (2) October 1;

of each year the governing body of the school corporation shall submit to the bureau of motor vehicles the pertinent information concerning an individual's ineligibility under subsection (a) to be issued an operator's license or a learner's permit.

(g) The department shall develop guidelines concerning criteria used in defining a habitual truant that may be considered by a governing body in complying with subsection (b).

SECTION 19. IC 20-33-2-28.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.5. (a) This section applies to an individual:

(1) who:

- (A) attends or last attended a public school;
- (B) is at least sixteen (16) years of age but less than eighteen (18) years of age; and
- (C) has not completed the requirements for graduation;

(2) who:

- (A) wishes to withdraw from school before graduation;
- (B) fails to return at the beginning of a semester; or
- (C) stops attending school during a semester; and

(3) who has no record of transfer to another school.

(b) An individual to whom this section applies may withdraw from school only if all of the following conditions are met:

- (1) An exit interview is conducted.
- (2) The individual's parent consents to the withdrawal.
- (3) The school principal approves of the withdrawal.

During the exit interview, the school principal shall provide to the student and the student's parent a copy of statistics compiled by the department concerning the likely consequences of life without a high school diploma. The school principal shall advise the student and the student's parent that the student's withdrawal from school may prevent the student from receiving or result in the revocation of the student's employment certificate and driver's license or learner's permit.

(c) For purposes of this section, the following must be in written form:

- (1) An individual's request to withdraw from school.
- (2) A parent's consent to a withdrawal.
- (3) A principal's consent to a withdrawal.

(d) If the individual's principal does not consent to the individual's withdrawal under this section, the individual's parent may appeal the denial of consent to the governing body of the public school that the individual last attended.

(e) Each public school, including each school corporation and each charter school (as defined in IC 20-24-1-4), shall provide an annual report to the department setting forth the following information:

(1) The total number of individuals:

- (A) who withdrew from school under this section; and
- (B) who either:
  - (i) failed to return to school at the beginning of a semester; or
  - (ii) stopped attending school during a semester; and for whom there is no record of transfer to another school.

(2) The number of individuals who withdrew from school following an exit interview.

(f) If an individual to which this section applies:

- (1) has not received consent to withdraw from school under this section; and
- (2) fails to return to school at the beginning of a semester or during the semester;

the principal of the school that the individual last attended shall deliver by certified mail or personal delivery to the bureau of child labor a record of the individual's failure to return to school so that the bureau of child labor revokes any employment certificates issued to the individual and does not issue any additional employment certificates to the individual. For purposes of IC 20-33-3-13, the individual shall be considered a dropout.

(g) At the same time that a school principal delivers the record under subsection (f), the principal shall deliver by certified mail or personal delivery to the bureau of motor vehicles a record of the individual's failure to return to school so that the bureau of motor vehicles revokes any driver's license or learner's permit issued to the individual and does not issue any additional driver's licenses or learner's permits to the individual before the individual is at least eighteen (18) years of age. For purposes of IC 9-24-2-1, the individual shall be considered a dropout.

(h) If:

- (1) a principal has delivered the record required under subsection (f) or (g), or both; and
- (2) the school subsequently gives consent to the individual to withdraw from school under this section;

the principal of the school shall send a notice of withdrawal to the bureau of child labor and the bureau of motor vehicles by certified mail or personal delivery and, for purposes of IC 20-33-3-13 and IC 9-24-2-1, the individual shall no longer be considered a dropout.

SECTION 20. IC 20-33-2-28.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005] Sec. 28.7. (a) The department of education shall compile and make available to schools statistics concerning the likely consequences of life without a high school diploma. The statistics must include, but are not limited to, statistics that show the likelihood of an individual's:

- (1) unemployment or employment in a lower paying job; and
- (2) involvement in criminal activity;

as the consequence of not obtaining a high school diploma.

(b) The department of education shall update the statistics made available under subsection (a) every two (2) years.

SECTION 21. IC 20-33-7-3, AS ADDED BY HEA 1288-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) As used in this section, "juvenile justice agency" has the meaning set forth in IC 10-13-4-5.

(b) A school corporation or other entity to which the education records privacy provisions of the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g) apply may disclose or report on the education records of a child, including personally identifiable information contained in the education records, without the consent of the child's parent under the following conditions:

- (1) The disclosure or reporting of education records is to a state or local juvenile justice agency.
- (2) The disclosure or reporting relates to the ability of the juvenile justice system to serve, before adjudication, the student whose records are being released.
- (3) The juvenile justice agency receiving the information certifies, in writing, to the entity providing the information that the agency or individual receiving the information has agreed not to disclose it to a third party, other than another juvenile justice agency, without the consent of the child's parent.

(c) For purposes of subsection (b)(2), a disclosure or reporting of education records concerning a child who has been adjudicated as a delinquent child shall be treated as related to the ability of the juvenile justice system to serve the child before adjudication if the juvenile justice agency seeking the information provides sufficient information to enable the keeper of the education records to determine that the juvenile justice agency seeks the information in order to identify and intervene with the child as a juvenile at risk of delinquency rather than to obtain information solely related to supervision of the child as an adjudicated delinquent child.

(d) A school corporation to which the education records privacy provisions of the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g) apply may disclose or report on the education records of a child, including personally identifiable information contained in the education records, without the consent of the child's parent, if the child has been suspended or expelled and referred to a court in accordance with an agreement for court assisted resolution of suspension and expulsion cases under IC 20-33-8.5. The request for the education records of a child by a court must be for the purpose of assisting the child before adjudication.

(d) (e) A school corporation or other entity to which the education records privacy provisions of the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g) apply that:

- (1) discloses or reports on the education records of a child, including personally identifiable information contained in the education records, in violation of this section; and
- (2) makes a good faith effort to comply with this section; is immune from civil liability.

SECTION 22. IC 20-33-8-12, AS ADDED BY HEA-1288-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) The governing body of a school corporation must do the following:

- (1) Establish written discipline rules, which may include:
  - (A) appropriate dress codes; and
  - (B) if applicable, an agreement for court assisted resolution of school suspension and expulsion cases; for the school corporation.
- (2) Give general publicity to the discipline rules within a school where the discipline rules apply by actions such as:
  - (A) making a copy of the discipline rules available to students and students' parents; or
  - (B) delivering a copy of the discipline rules to students or the parents of students.

This publicity requirement may not be construed technically and is satisfied if the school corporation makes a good faith effort to disseminate to students or parents generally the text or substance of a discipline rule.

(b) The:

- (1) superintendent of a school corporation; and
- (2) principals of each school in a school corporation;

may adopt regulations establishing lines of responsibility and related guidelines in compliance with the discipline policies of the governing body.

(c) The governing body of a school corporation may delegate:

- (1) rulemaking;
- (2) disciplinary; and
- (3) other authority;

as reasonably necessary to carry out the school purposes of the school corporation.

(d) Subsection (a) does not apply to rules or directions concerning the following:

- (1) Movement of students.
- (2) Movement or parking of vehicles.
- (3) Day to day instructions concerning the operation of a classroom or teaching station.
- (4) Time for commencement of school.
- (5) Other standards or regulations relating to the manner in which an educational function must be administered.

However, this subsection does not prohibit the governing body from regulating the areas listed in this subsection.

SECTION 23. IC 20-33-8.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

#### **Chapter 8.5. Court Assisted Resolution of Suspension and Expulsion Cases**

**Sec. 1. This chapter does not apply to a nonpublic school.**

**Sec. 2. A superintendent and a court having juvenile jurisdiction in the county may enter into a voluntary agreement (referred to as the "agreement" in this chapter) for court assisted resolution of school suspension and expulsion cases. The agreement may require the court to supervise or provide for the supervision of an expelled or suspended student who has been referred to the court by the school corporation in accordance with the terms of the agreement.**

**Sec. 3. The agreement may require that a court do one (1) or more of the following:**

- (1) Establish a flexible program for the supervision of a student who has been suspended or expelled.
- (2) Supervise a student who has been suspended or expelled.
- (3) Require a student who has been suspended or expelled to participate in a school program (including an alternative educational program) for the supervision of a student who has been suspended or expelled.

**Sec. 4. (a) The agreement may require that a school corporation do one (1) or more of the following:**

- (1) Define the violation for which a student who has been suspended or expelled shall be referred to the court.
- (2) Refer a student who has been suspended or expelled for a violation described in subdivision (1) to the court.
- (3) Establish a school program (including an alternative educational program) for the supervision of a student who has been suspended or expelled.

**(b) If a school corporation enters into an agreement, the discipline rules adopted by the school corporation under IC 20-33-8-12 must specify the violations for which a student may be referred to the court under the agreement.**

**Sec. 5. The agreement must provide how the expenses of supervising a student who has been suspended or expelled are funded. A school corporation may not be required to expend more than the amount determined under IC 21-3-1.7-6.7(e) for each student referred under the agreement.**

**Sec. 6. A student shall be given an informal hearing before the court, in a setting agreed upon by the court and the school system, as soon as practicable following the student's referral to the court, after notice of the hearing has been provided to the student's parent.**

**Sec. 7. A hearing under this chapter is not a hearing to determine whether a student who has been suspended or expelled is a child in need of services. However, if a court determines that a student who has been suspended or expelled may:**

- (1) be a child in need of services (as described in IC 31-34-1); or
- (2) have committed a delinquent act (as described in IC 31-37);

**the court may notify the office of family and children or the prosecuting attorney.**

**Sec. 8. A parent or guardian has the right to be present and may be required to be present during the student's appearance.**

**Sec. 9. A student's appearance in court under this chapter shall not be used against the child or the child's parents or guardians in any subsequent court proceeding, including but not limited to any delinquency or child in need of services matter under IC 31.**

**Sec. 10. All records of the student's court appearance shall be expunged upon the student's completion of the out-of-school suspension or expulsion program.**

**Sec. 11. Notwithstanding the terms of the agreement, a suspension, an expulsion, or a referral of a student who is a child with a disability (as defined in IC 20-1-6-1) is subject to the:**

- (1) procedural requirements of 20 U.S.C. 1415; and
- (2) rules adopted by the Indiana state board of education.

**Sec. 12. This chapter does not deprive a child of any due process rights to which the child may be entitled.**

**SECTION 24. [EFFECTIVE UPON PASSAGE] (a) The department of education shall develop a form for the written consent to withdraw from school for a school corporation's use in implementing IC 20-33-2-28.5, as added by this act.**

**(b) The department of education shall under this SECTION begin compiling the statistics concerning the likely consequences of life without a high school diploma as required by IC 20-33-2-28.7, as added by this act.**

**(c) This SECTION expires December 31, 2005.**

**SECTION 25. An emergency is declared for this act.**

(Reference is to EHB 1794 as printed March 18, 2005.)

BEHNING	LUBBERS
PORTER	ROGERS
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

#### **CONFERENCE COMMITTEE REPORT EHB 1098-1; filed April 26, 2005, at 6:14 p.m.**

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1098 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill

and that the bill be further amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 10-13-3-38.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 38.5. (a) Under federal P.L.92-544 (86 Stat. 1115), the department may use an individual's fingerprints submitted by the individual for the following purposes:

(1) Determining the individual's suitability for employment with the state, or as an employee of a contractor of the state, in a position:

(A) that has a job description that includes contact with, care of, or supervision over a person less than eighteen (18) years of age;

(B) that has a job description that includes contact with, care of, or supervision over an endangered adult (as defined in IC 12-10-3-2), except the individual is not required to meet the standard for harmed or threatened with harm set forth in IC 12-10-3-2(a)(3);

(C) at a state institution managed by the office of the secretary of family and social services or state department of health;

(D) at the Indiana School for the Deaf established by IC 20-16-2-1;

(E) at the Indiana School for the Blind established by IC 20-15-2-1;

(F) at a juvenile detention facility;

(G) with the gaming commission under IC 4-33-3-16;

(H) with the department of financial institutions under IC 28-11-2-3; or

(I) that has a job description that includes access to or supervision over state financial or personnel data, including state warrants, banking codes, or payroll information pertaining to state employees.

(2) Identification in a request related to an application for a teacher's license submitted to the professional standards board established under IC 20-1-1.4.

**(3) Use by the Indiana board of pharmacy in determining the individual's suitability for a position or employment with a wholesale drug distributor, as specified in IC 25-26-14-16(b), IC 25-26-14-16.5(b), IC 25-26-14-17.8(c), and IC 25-26-14-20.**

An applicant shall submit the fingerprints in an appropriate format or on forms provided for the employment or license application. The department shall charge each applicant the fee established under section 28 of this chapter and by federal authorities to defray the costs associated with a search for and classification of the applicant's fingerprints. The department may forward fingerprints submitted by an applicant to the Federal Bureau of Investigation or any other agency for processing. The state personnel department or the agency to which the applicant is applying for employment or a license may receive the results of all fingerprint investigations.

(b) An applicant who is an employee of the state may not be charged under subsection (a).

(c) Subsection (a)(1) does not apply to an employee of a contractor of the state if the contract involves the construction or repair of a capital project or other public works project of the state.

SECTION 2. IC 12-9-5-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5. Notwithstanding any other law:**

**(1) home health agencies licensed under IC 16-27-1 are approved to provide home health services; and**

**(2) personal services agencies licensed under IC 16-27-4 are approved to provide personal services;**

**under any federal waiver granted to the state under 42 U.S.C. 1315 or 42 U.S.C. 1396n.**

SECTION 3. IC 16-18-2-28.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 28.5. (a) "Attendant care services", for purposes of IC 16-27-1 ~~has the meaning set forth in IC 16-27-1-0.5.~~ **and IC 16-27-4, means services:**

**(1) that could be performed by an impaired individual for whom the services are provided if the individual were not impaired; and**

**(2) that enable the impaired individual:**

**(A) to live in the individual's home and community rather than in an institution; and**

**(B) to carry out functions of daily living, self-care, and mobility.**

**(b) The term includes the following:**

**(1) Assistance in getting in and out of beds, wheelchairs, and motor vehicles.**

**(2) Assistance with routine bodily functions, including:**

**(A) bathing and personal hygiene;**

**(B) using the toilet;**

**(C) dressing and grooming; and**

**(D) feeding, including preparation and cleanup.**

**(3) The provision of assistance:**

**(A) through providing reminders or cues to take medication, the opening of preset medication containers, and providing assistance in the handling or ingesting of noncontrolled substance medications, including eye drops, herbs, supplements, and over-the-counter medications; and**

**(B) to an individual who is unable to accomplish the task due to an impairment and who is:**

**(i) competent and has directed the services; or**

**(ii) incompetent and has the services directed by a competent individual who may consent to health care for the impaired individual.**

SECTION 4. IC 16-18-2-56.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 56.3. "Client", for purposes of IC 16-27-4, has the meaning set forth in IC 16-27-4-1.**

SECTION 5. IC 16-18-2-162 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 162. (a) "Health care professional", for purposes of IC 16-27-1 and IC 16-27-4, has the meaning set forth in IC 16-27-1-1.

(b) "Health care professional", for purposes of IC 16-27-2, has the meaning set forth in IC 16-27-2-1.

SECTION 6. IC 16-18-2-266.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 266.5. "Parent personal services agency", for purposes of IC 16-27-4, has the meaning set forth in IC 16-27-4-2.**

SECTION 7. IC 16-18-2-277.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 277.6. "Personal representative", for purposes of IC 16-27-4, has the meaning set forth in IC 16-27-4-3.**

SECTION 8. IC 16-18-2-277.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 277.7. "Personal services", for purposes of IC 16-27-2 and IC 16-27-4, has the meaning set forth in IC 16-27-4-4.**

SECTION 9. IC 16-18-2-277.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 277.8. "Personal services agency", for purposes of IC 16-27-4, has the meaning set forth in IC 16-27-4-5.**

SECTION 10. IC 16-27-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) As used in this chapter, "home health services" means services that: ~~are:~~

**(1) are provided to a patient by:**

**(A) a home health agency; or**

**(B) another person under an arrangement with a home health agency;**

**in the temporary or permanent residence of the patient; and**

**(2) either, are required by law to be:**

**(A) ordered by a licensed physician, a licensed dentist, a licensed chiropractor, a licensed podiatrist, or a licensed optometrist for the service to be performed; or**

**(B) performed only by a health care professional.**

**(b) The term includes the following:**

- (1) Nursing treatment and procedures.
  - (2) Physical therapy.
  - (3) Occupational therapy.
  - (4) Speech therapy.
  - (5) Medical social services.
  - (6) Home health aide services.
  - (7) Other therapeutic services.
- (c) The term does not apply to the following:
- (1) Services provided by a physician licensed under IC 25-22.5.
  - (2) Incidental services provided by a licensed health facility to patients of the licensed health facility.
  - (3) Services provided by employers or membership organizations using health care professionals for their employees, members, and families of the employees or members if the health or home care services are not the predominant purpose of the employer or a membership organization's business.
  - (4) Nonmedical nursing care given in accordance with the tenets and practice of a recognized church or religious denomination to a patient who depends upon healing by prayer and spiritual means alone in accordance with the tenets and practices of the patient's church or religious denomination.
  - (5) Services that are allowed to be performed by an attendant under IC 16-27-1-10.
  - (6) Authorized services provided by a personal services attendant under IC 12-10-17.

SECTION 11. IC 16-27-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. The state department shall adopt rules under IC 4-22-2 to do the following:

- (1) Protect the health, safety, and welfare of patients.
- (2) Govern the qualifications of applicants for licenses.
- (3) Govern the operating policies, supervision, and maintenance of service records of home health agencies.
- (4) Govern the procedure for issuing, renewing, denying, or revoking an annual license to a home health agency, including the following:
  - (A) The form and content of the license.
  - (B) The collection of an annual license fee of not more than two hundred ~~fifty~~ dollars ~~(\$200)~~ **(\$250)** that the state department may waive.
- (5) Exempt persons who do not provide home health services under this chapter.

SECTION 12. IC 16-27-2-2.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.2. As used in this chapter, "services" includes:

- (1) home health services (as defined in IC 16-27-1-5); ~~and~~
- (2) any services such as homemaker, companion, sitter, or handyman services provided by a home health agency in the temporary or permanent residence of a patient or client of the home health agency; ~~and~~
- (3) personal services.**

SECTION 13. IC 16-27-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A person may not operate a home health agency **or a personal services agency** if the person has been convicted of any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Exploitation of an endangered adult (IC 35-46-1-12).
- (4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
- (5) Theft (IC 35-43-4), if the person's conviction for theft occurred less than ten (10) years before the date of submission by the person of an application for licensure as a home health agency under IC 16-27-1 **or as a personal services agency under IC 16-27-4.**

(b) A person who knowingly or intentionally violates this section commits a Class A misdemeanor.

SECTION 14. IC 16-27-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A person who operates a home health agency **under IC 16-27-1 or a personal services agency under IC 16-27-4** shall apply, not more than three (3) business days after the date that an employee begins to provide services in a patient's temporary or permanent residence, for a copy

of the employee's limited criminal history from the Indiana central repository for criminal history information under IC 10-13-3.

(b) A home health agency **or personal services agency** may not employ a person to provide services in a patient's or client's temporary or permanent residence for more than three (3) business days without applying for that person's limited criminal history as required by subsection (a).

SECTION 15. IC 16-27-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Except as provided in subsection (b), a person who operates a home health agency **under IC 16-27-1 or a personal services agency under IC 16-27-4** may not employ a person to provide services in a patient's or client's temporary or permanent residence if that person's limited criminal history indicates that the person has been convicted of any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Exploitation of an endangered adult (IC 35-46-1-12).
- (4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
- (5) Theft (IC 35-43-4), if the conviction for theft occurred less than ten (10) years before the person's employment application date.

(b) A home health agency **or personal services agency** may not employ a person to provide services in a patient's or client's temporary or permanent residence for more than twenty-one (21) calendar days without receipt of that person's limited criminal history required by section 4 of this chapter, unless the Indiana central repository for criminal history information under IC 10-13-3 is solely responsible for failing to provide the person's limited criminal history to the home health agency **or personal services agency** within the time required under this subsection.

SECTION 16. IC 16-27-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) A person who operates a home health agency **or a personal services agency under IC 16-27-4** is responsible for the payment of fees under IC 10-13-3-30 and other fees required under section 4 of this chapter.

(b) A home health agency **or personal services agency** may require a person who applies to the home health agency **or personal services agency** for employment to provide services in a patient's or client's temporary or permanent residence:

- (1) to pay the cost of fees described in subsection (a) to the home health agency **or personal services agency** at the time the person submits an application for employment; or
- (2) to reimburse the home health agency **or personal services agency** for the cost of fees described in subsection (a).

SECTION 17. IC 16-27-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. A person who:

- (1) operates a home health agency **or personal services agency**; and

(2) violates section 4 or 5 of this chapter; commits a Class A infraction.

SECTION 18. IC 16-27-4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

#### **Chapter 4. Licensure of Personal Services Agencies**

**Sec. 1. As used in this chapter, "client" means an individual who has been accepted to receive personal services from a personal services agency.**

**Sec. 2. As used in this chapter, "parent personal services agency" means the personal services agency that develops and maintains administrative and fiscal control over a branch office.**

**Sec. 3. As used in this chapter, "personal representative" means a person who has legal authority to act on behalf of the client with regard to the action to be taken.**

**Sec. 4. (a) As used in this chapter, "personal services" means:**

- (1) attendant care services;**
- (2) homemaker services that assist with or perform household tasks, including housekeeping, shopping, laundry, meal planning and preparation, and cleaning; and**
- (3) companion services that provide fellowship, care, and protection for a client, including transportation, letter writing, mail reading, and escort services;**

that are provided to a client at the client's residence.

(b) The term does not apply to the following:

- (1) Incidental services provided by a licensed health facility to patients of the licensed health facility.
- (2) Services provided by employers or membership organizations for their employees, members, and families of the employees or members if the services are not the predominant purpose of the employer or the membership organization's business.
- (3) Services that are allowed to be performed by a personal services attendant under IC 12-10-17.
- (4) Services that require the order of a health care professional for the services to be lawfully performed in Indiana.
- (5) Assisted living Medicaid waiver services.
- (6) Services that are performed by a facility described in IC 12-10-15.

Sec. 5. (a) As used in this chapter, "personal services agency" means a person that provides or offers to provide a personal service for compensation, whether through the agency's own employees or by arrangement with another person.

(b) The term does not include the following:

- (1) An individual who provides personal services only to the individual's family or to not more than three (3) individuals per residence and not more than a total of seven (7) individuals concurrently. As used in this subdivision, "family" means the individual's spouse, child, parent, parent-in-law, grandparent, grandchild, brother, brother-in-law, sister, sister-in-law, aunt, aunt-in-law, uncle, uncle-in-law, niece, and nephew.
- (2) A local health department as described in IC 16-20 or IC 16-22-8.
- (3) A person that:
  - (A) is approved by the division of disability, aging, and rehabilitative services to provide supported living services or supported living support to individuals with developmental disabilities;
  - (B) is subject to rules adopted under IC 12-11-2.1; and
  - (C) serves only individuals with developmental disabilities who are in a placement authorized under IC 12-11-2.1-4.

Sec. 6. (a) To operate a personal services agency, a person must obtain a license from the state health commissioner. A personal services agency may not be opened, operated, managed, or maintained or conduct business without a license from the state department. Each parent personal services agency must obtain a separate license.

(b) A parent personal services agency may maintain branch offices that operate under the license of the parent personal services agency. Each branch office must be:

- (1) at a location or site from which the personal services agency provides services;
- (2) owned and controlled by the parent personal services agency; and
- (3) located within a radius of one hundred twenty (120) miles of the parent personal services agency.

(c) A license is required for any personal services agency providing services in Indiana. An out-of-state personal services agency must be authorized by the secretary of state to conduct business in Indiana and have a branch office in Indiana.

(d) Application for a license to operate a personal services agency must be made on a form provided by the state department and must be accompanied by the payment of a fee of two hundred fifty dollars (\$250). The application may not require any information except as required under this chapter.

(e) After receiving a completed application that demonstrates prima facie compliance with the requirements of this chapter and the payment of the fee required by subsection (d), the state department shall issue a license to the applicant to operate a personal services agency. The state department may conduct an onsite inspection in conjunction with the issuance of an initial license or the renewal of a license.

(f) In the state department's consideration of:

- (1) an application for licensure;

(2) an application for renewal of licensure;

(3) a complaint alleging noncompliance with the requirements of this chapter; or

(4) an investigation conducted under section 7(a) of this chapter;

the state department's onsite inspections in conjunction with those actions are limited to determining the personal service agency's compliance with the requirements of this chapter or permitting or aiding an illegal act in a personal services agency.

(g) Subject to subsection (e), when conducting an onsite inspection, the state department must receive all documents necessary to determine the personal service agency's compliance with the requirements of this chapter. A personal services agency must produce documents requested by the state department surveyor not less than twenty-four (24) hours after the documents have been requested.

(h) A license expires one (1) year after the date of issuance of the license under subsection (e). However, the state department may issue an initial license for a period of less than one (1) year to stagger the expiration dates. The licensee shall notify the state department in writing at least thirty (30) days before closing or selling the personal services agency.

(i) A personal services agency license may not be transferred or assigned. Upon sale, assignment, lease, or other transfer, including transfers that qualify as a change in ownership, the new owner or person in interest must obtain a license from the state department under this chapter before maintaining, operating, or conducting the personal services agency.

(j) A home health agency licensed under IC 16-27-1 that operates a personal services agency within the home health agency is subject to the requirements of this chapter. The requirements under IC 16-27-1 do not apply to a home health agency's personal services agency. The requirements under this chapter do not apply to a home health agency's operations. A home health agency that is licensed under IC 16-27-1 is not required to obtain a license under this chapter.

(k) If a person who is licensed to operate a personal services agency is also licensed to operate a home health agency under IC 16-27-1, an onsite inspection for renewal of the person's personal services agency license must, to the extent feasible, be conducted at the same time as an onsite inspection for the home health agency license.

Sec. 7. (a) The state department shall investigate a report of an unlicensed personal services agency operation and report its findings to the attorney general.

(b) The attorney general may do the following:

(1) Seek an injunction in the circuit or superior court of the county in which the unlicensed home health agency is located.

(2) Prosecute violations under section 23 of this chapter.

Sec. 8. (a) If a personal services agency is aware that the client's medical or health condition has become unstable or unpredictable, the personal services agency shall notify the client, the client's personal representative, a family member, other relative of the client, or other person identified by the client of the need for a referral for medical or health services. The notification may be given in writing or orally and must be documented in the client's record with the personal services agency.

(b) The personal services agency may continue to provide personal services for a client with an unstable or unpredictable medical or health condition but may not manage or represent itself as able to manage the client's medical or health condition.

Sec. 9. (a) A personal services agency shall employ an individual to act as the personal services agency's manager. The manager is responsible for the organization and daily operation of the personal services agency.

(b) The manager may designate in writing one (1) or more individuals to act on behalf of or to perform any or all the responsibilities of the personal services agency's manager under this chapter.

Sec. 10. The personal services agency's manager or the manager's designee shall prepare a service plan for a client before providing personal services for the client. A permanent change to the service plan requires a written change to the service

plan. The service plan must:

- (1) be in writing, dated, and signed by the individual who prepared it;
- (2) list the types and schedule of services to be provided; and
- (3) state that the services to be provided to the client are subject to the client's right to temporarily suspend, permanently terminate, temporarily add, or permanently add the provision of any service.

All permanent changes require a change in the written service plan. The service plan must be signed and dated by the client not later than fourteen (14) days after services begin for the client and not later than fourteen (14) days after any permanent change to the service plan.

Sec. 11. The personal services agency's manager or the manager's designee shall conduct a client satisfaction review with the client every seventy-six (76) to one hundred four (104) days to discuss the services being provided and to determine if any change in the plan of services should occur. The review with the client may be in person or by telephone. This client satisfaction review must:

- (1) be put in writing; and
- (2) be signed and dated by the individual conducting the review.

Sec. 12. The personal services agency shall provide the client or the client's personal representative with the personal services agency's written statement of client rights not more than seven (7) days after providing services to the client. The statement of client rights must include the following information:

- (1) The client has the right to have the client's property treated with respect.
- (2) The client has the right to temporarily suspend, permanently terminate, temporarily add, or permanently add services in the service plan.
- (3) The client has the right to file grievances regarding services furnished or regarding the lack of respect for property by the personal services agency and is not subject to discrimination or reprisal for filing a grievance.
- (4) The client has the right to be free from verbal, physical, and psychological abuse and to be treated with dignity.
- (5) A statement that it is not within the scope of the personal services agency's license to manage the medical and health conditions of the client if a condition becomes unstable or unpredictable.
- (6) The charges for services provided by the personal services agency.
- (7) The personal services agency's policy for notifying the client of any increase in the cost of services.
- (8) The hours the personal services agency's office is open for business.
- (9) That on request the personal services agency will make available to the client a written list of the names and addresses of all persons having at least a five percent (5%) ownership or controlling interest in the personal services agency.
- (10) The procedures for contacting the personal services agency's manager, or the manager's designee, while the personal services agency's office is open or closed.
- (11) The procedure and telephone number to call to file a complaint with the personal services agency.
- (12) That the state department does not inspect personal service agencies as part of the licensing process but does investigate complaints concerning personal service agencies.
- (13) The procedure and telephone number to call to file a complaint with the state department along with the business hours of the state department.

Sec. 13. A personal services agency shall investigate a complaint made by a client, the client's family, or the client's personal representative regarding:

- (1) service that is or fails to be furnished; and
- (2) lack of respect for the client's property by anyone furnishing services on behalf of the personal services agency.

The personal services agency shall document the complaint and

the resolution of the complaint.

Sec. 14. The personal services agency's manager or the manager's designee shall be available to respond to client telephone calls twenty-four (24) hours a day.

Sec. 15. An employee or agent of a personal services agency who will have direct client contact must complete a tuberculosis test in the same manner as required by the state department for licensed home health agency employees and agents.

Sec. 16. (a) The competency of an employee or agent of a personal services agency who will perform attendant care services at the client's residence must be evaluated by the agency or the agency's designee for each attendant care services task that the personal services agency chooses to have that employee or agent perform. The agency has the sole discretion to determine if an employee or agent is competent to perform an attendant care services task.

(b) After an evaluation, an employee or agent shall be trained in the attendant care services tasks the personal services agency believes require improvement. The employee or agent shall be reevaluated following any training. The evaluation of the employee or agent and determination by the agency that the employee or agent is competent to perform the attendant care services task must occur before the employee or agent performs that task for a client without direct agency supervision.

(c) The content of the evaluation and training conducted under this section, including the date and the signature of the person conducting the evaluation and training, must be documented for each employee or agent who performs personal services.

Sec. 17. (a) Disclosure of ownership and management information must be made to the state department:

- (1) at the time of the personal services agency's request for licensure;
- (2) during each survey of the personal services agency; and
- (3) when there is a change in the management or in an ownership interest of more than five percent (5%) of the personal services agency.

(b) The disclosure under subsection (a) must include the following:

- (1) The name and address of all persons having at least five percent (5%) ownership or controlling interest in the personal services agency.
- (2) The name and address of each person who is an officer, a director, a managing agent, or a managing employee of the personal services agency.
- (3) The name and address of the person responsible for the management of the personal services agency.
- (4) The name and address of the chief executive officer and the chairperson (or holder of the equivalent position) of the governing body that is responsible for the person identified under subdivision (3).

(c) The determination of an ownership interest and the percentage of an ownership interest under this chapter must be determined under 45 CFR 420.201 and 45 CFR 420.202, as in effect on July 1, 2005.

Sec. 18. A personal services agency shall document evidence of compliance with the requirements of this chapter and document services provided to clients. The documentation or copies of the documentation must be maintained or be electronically accessible at a personal services agency's office in Indiana for not less than seven (7) years.

Sec. 19. (a) The state health commissioner may take one (1) or more of the following actions on any ground listed in subsection (b):

- (1) Issue a probationary license.
- (2) Conduct a resurvey.
- (3) Deny renewal of a license.
- (4) Revoke a license.
- (5) Impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000).

(b) The state health commissioner may take action under subsection (a) on any of the following grounds:

- (1) Violation of a provision of this chapter or a rule adopted under this chapter.
- (2) Permitting, aiding, or abetting the commission of an



illegal act in a personal services agency.

(c) IC 4-21.5 applies to an action under this section.

Sec. 20. (a) The state department shall adopt rules under IC 4-22-2 to govern the procedure for the following:

- (1) Issuing, renewing, denying, or revoking a personal services agency license.
- (2) Investigating a complaint against a personal services agency that alleges a violation of this chapter.
- (3) Collecting fees required under this chapter.

(b) The state department may not add to the substantive or procedural requirements in this chapter.

Sec. 21. A licensee or an applicant for a license aggrieved by an action under this chapter may request a review under IC 4-21.5.

Sec. 22. (a) In response to a request for review of an order referred to in subsection (c), the executive board shall appoint an appeals panel that consists of three (3) members as follows:

- (1) One (1) member of the executive board.
- (2) One (1) attorney admitted to the practice of law in Indiana.
- (3) One (1) individual with qualifications determined by the executive board.

(b) An employee of the state department may not be a member of the panel.

(c) The panel shall conduct proceedings for review of an order issued by an administrative law judge under this chapter. The panel is the ultimate authority under IC 4-21.5.

Sec. 23. A person who knowingly or intentionally:

- (1) operates a personal services agency; or
- (2) advertises the operation of a personal services agency;

that is not licensed under this chapter commits a Class A misdemeanor.

SECTION 19. IC 22-1-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

#### Chapter 5. Home Care Consumers and Worker Protection

Sec. 1. As used in this chapter, "attendant care services" has the meaning set forth in IC 16-18-2-28.5.

Sec. 2. As used in this chapter, "companion type services" refers to services described in IC 12-10-17-2(2).

Sec. 3. As used in this chapter, "consumer" means an individual who:

- (1) receives home care services given by a home care services worker in the individual's residence; or
- (2) pays for and directs the home care services for another individual.

Sec. 4. As used in this chapter, "consumer notice" means the notice described in section 14 of this chapter.

Sec. 5. As used in this chapter, "department" refers to the department of labor created under IC 22-1-1-1.

Sec. 6. As used in this chapter, "home care services" means skilled and unskilled services provided to an individual at the individual's residence to enable the individual to remain in the residence safely and comfortably. The provision of at least two (2) of the following is included in home care services:

- (1) Nursing.
- (2) Therapy.
- (3) Attendant care.
- (4) Companion type services.
- (5) Homemaker services.

Sec. 7. As used in this chapter, "home care services worker" means an individual performing home care services for compensation.

Sec. 8. As used in this chapter, "homemaker services" means assistance with or performing household tasks that include housekeeping, shopping, laundry, meal planning and preparation, handyman services, and seasonal chores.

Sec. 9. As used in this chapter, "placement agency" means a person engaged in the business of securing home care services employment for an individual or securing a home care services worker for a consumer. The term:

- (1) includes an employment agency, a nurse registry, and an entity that places a home care services worker for compensation by a consumer in the consumer's residence to provide home care services; and

(2) does not include a worker who solely and personally provides home care services to another individual at the residence of that individual.

Sec. 10. As used in this chapter, "skilled services" means services provided by a:

- (1) registered nurse (as defined in IC 25-23-1-1.1(a));
- (2) licensed practical nurse (as defined in IC 25-23-1-1.2); or
- (3) health care professional listed in IC 16-27-1-1.

Sec. 11. As used in this chapter, "worker notice" means the statement described in section 17 of this chapter.

Sec. 12. This chapter applies to a placement agency, but does not apply to a:

- (1) hospital (as defined in IC 16-18-2-179);
- (2) health facility (as defined in IC 16-18-2-167(a)); or
- (3) home health agency (as defined in IC 16-18-2-173).

Sec. 13. (a) A placement agency:

- (1) must provide a consumer with a consumer notice each time a home care services worker is placed in the home of the consumer; and
- (2) is not required to provide a consumer notice when a new or different home care services worker is substituting for the regular home care services worker placed with the consumer.

(b) Before a placement agency places a home care services worker with a consumer, the home care services worker must provide the placement agency with a copy of the individual's limited criminal history from the central repository for criminal history information under IC 10-13-3. The home care services worker is responsible for the fees required under IC 10-13-3-30 and must annually obtain an updated limited criminal history. A copy of the home care services worker's limited criminal history must be made available to the consumer.

Sec. 14. A consumer notice must include the following:

- (1) The duties, responsibilities, and obligations of the placement agency to the:
  - (A) home care services worker; and
  - (B) consumer.
- (2) A statement identifying the placement agency as:
  - (A) an employer;
  - (B) a joint employer;
  - (C) a leasing employer; or
  - (D) not an employer.
- (3) A statement that notwithstanding the employment status of the placement agency, the consumer:
  - (A) may be considered an employer under state and federal employment laws; and
  - (B) may be responsible for:
    - (i) payment of local, state, or federal employment taxes;
    - (ii) payment for Social Security and Medicare contributions;
    - (iii) ensuring payment of at least the minimum wage;
    - (iv) overtime payment;
    - (v) unemployment contributions under IC 22-4-11; or
    - (vi) worker's compensation insurance as required by IC 22-3-2-5 and IC 22-3-7-34;

of the home care services worker.

- (4) The appropriate telephone number, address, and electronic mail address of the department for inquiries regarding the contents of the notice.

The department shall determine the content and format of the consumer notice.

Sec. 15. The failure of a placement agency to provide a consumer notice to the consumer at the time a home care services worker is placed in the consumer's home does not relieve a consumer from the duties or obligations as an employer. If a placement agency fails to provide a consumer notice and the consumer is liable for payment of wages, taxes, worker's compensation insurance premiums, or unemployment compensation employer contributions, the consumer has a right of indemnification against the placement agency, which includes the actual amounts paid to or on behalf of the home care services worker as well as the consumer's attorney's fees and costs.

Sec. 16. A placement agency that will not be the actual

employer of the home care services worker shall provide a worker notice as set forth in section 17 of this chapter to a home care services worker who is placed with a consumer. The worker notice must:

- (1) be provided to the home care services worker upon placement in the consumer's home; and
- (2) specify the home care services worker's legal relationship with the placement agency and the consumer.

Sec. 17. The worker notice referred to in section 16 of this chapter must contain the following:

- (1) The duties, responsibilities, and obligations of the placement agency, the consumer, and the home care services worker if the home care services worker is determined to be an independent contractor, including:

(A) a statement of the party responsible for the payment of the home care services worker's wages, taxes, Social Security and Medicare contributions, unemployment contributions, and worker's compensation insurance premiums; and

(B) a statement identifying the party responsible for the home care services worker's hiring, firing, discipline, day to day supervision, assignment of duties, and provision of equipment or materials for use by the home care services worker.

- (2) The telephone number, address, and electronic mail address of the department for inquiries regarding the contents of the notice.

The department shall determine the content and format of the consumer notice.

Sec. 18. The department may at any time and upon receiving a complaint from an interested person investigate an alleged violation of this chapter by a placement agency.

Sec. 19. The department may impose a civil penalty not to exceed one thousand dollars (\$1,000) against a placement agency that fails to provide a worker notice or a consumer notice at the times required under section 13 or 16 of this chapter. The civil penalty may be assessed by the department and, if necessary, shall be recovered by the prosecuting attorney of the county in which the violation has occurred or by the attorney general, as provided in IC 22-1-1-18.

SECTION 20. IC 25-22.5-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) This article, as it relates to the unlawful or unauthorized practice of medicine or osteopathic medicine, does not apply to any of the following:

(1) A student in training in a medical school approved by the board, or while performing duties as an intern or a resident in a hospital under the supervision of the hospital's staff or in a program approved by the medical school.

(2) A person who renders service in case of emergency where no fee or other consideration is contemplated, charged, or received.

(3) A paramedic (as defined in IC 16-18-2-266), an emergency medical technician-basic advanced (as defined in IC 16-18-2-112.5), an emergency medical technician-intermediate (as defined in IC 16-18-2-112.7), an emergency medical technician (as defined in IC 16-18-2-112), or a person with equivalent certification from another state who renders advanced life support (as defined in IC 16-18-2-7) or basic life support (as defined in IC 16-18-2-33.5):

(A) during a disaster emergency declared by the governor under IC 10-14-3-12 in response to an act that the governor in good faith believes to be an act of terrorism (as defined in IC 35-41-1-26.5); and

(B) in accordance with the rules adopted by the Indiana emergency medical services commission or the disaster emergency declaration of the governor.

(4) Commissioned medical officers or medical service officers of the armed forces of the United States, the United States Public Health Service, and medical officers of the United States Department of Veterans Affairs in the discharge of their official duties in Indiana.

(5) An individual who is not a licensee who resides in another state or country and is authorized to practice medicine or

osteopathic medicine there, who is called in for consultation by an individual licensed to practice medicine or osteopathic medicine in Indiana.

(6) A person administering a domestic or family remedy to a member of the person's family.

(7) A member of a church practicing the religious tenets of the church if the member does not make a medical diagnosis, prescribe or administer drugs or medicines, perform surgical or physical operations, or assume the title of or profess to be a physician.

(8) A school corporation and a school employee who acts under IC 34-30-14 (or IC 34-4-16.5-3.5 before its repeal).

(9) A chiropractor practicing the chiropractor's profession under IC 25-10 or to an employee of a chiropractor acting under the direction and supervision of the chiropractor under IC 25-10-1-13.

(10) A dental hygienist practicing the dental hygienist's profession under IC 25-13.

(11) A dentist practicing the dentist's profession under IC 25-14.

(12) A hearing aid dealer practicing the hearing aid dealer's profession under IC 25-20.

(13) A nurse practicing the nurse's profession under IC 25-23. However, a registered nurse may administer anesthesia if the registered nurse acts under the direction of and in the immediate presence of a physician and holds a certificate of completion of a course in anesthesia approved by the American Association of Nurse Anesthetists or a course approved by the board.

(14) An optometrist practicing the optometrist's profession under IC 25-24.

(15) A pharmacist practicing the pharmacist's profession under IC 25-26.

(16) A physical therapist practicing the physical therapist's profession under IC 25-27.

(17) A podiatrist practicing the podiatrist's profession under IC 25-29.

(18) A psychologist practicing the psychologist's profession under IC 25-33.

(19) A speech-language pathologist or audiologist practicing the pathologist's or audiologist's profession under IC 25-35.6.

(20) An employee of a physician or group of physicians who performs an act, a duty, or a function that is customarily within the specific area of practice of the employing physician or group of physicians, if the act, duty, or function is performed under the direction and supervision of the employing physician or a physician of the employing group within whose area of practice the act, duty, or function falls. An employee may not make a diagnosis or prescribe a treatment and must report the results of an examination of a patient conducted by the employee to the employing physician or the physician of the employing group under whose supervision the employee is working. An employee may not administer medication without the specific order of the employing physician or a physician of the employing group. Unless an employee is licensed or registered to independently practice in a profession described in subdivisions (9) through (18), nothing in this subsection grants the employee independent practitioner status or the authority to perform patient services in an independent practice in a profession.

(21) A hospital licensed under IC 16-21 or IC 12-25.

(22) A health care organization whose members, shareholders, or partners are individuals, partnerships, corporations, facilities, or institutions licensed or legally authorized by this state to provide health care or professional services as:

(A) a physician;

(B) a psychiatric hospital;

(C) a hospital;

(D) a health maintenance organization or limited service health maintenance organization;

(E) a health facility;

(F) a dentist;

(G) a registered or licensed practical nurse;

(H) a midwife;

(I) an optometrist;

(J) a podiatrist;

- (K) a chiropractor;
- (L) a physical therapist; or
- (M) a psychologist.

(23) A physician assistant practicing the physician assistant's profession under IC 25-27.5.

(24) A physician providing medical treatment under IC 25-22.5-1-2.1.

(25) An attendant who provides **attendant** care services (as defined in ~~IC 16-27-1-0.5~~, **IC 16-18-2-28.5**).

(26) A personal services attendant providing authorized attendant care services under IC 12-10-17.

(b) A person described in subsection (a)(9) through (a)(18) is not excluded from the application of this article if:

- (1) the person performs an act that an Indiana statute does not authorize the person to perform; and
- (2) the act qualifies in whole or in part as the practice of medicine or osteopathic medicine.

(c) An employment or other contractual relationship between an entity described in subsection (a)(21) through (a)(22) and a licensed physician does not constitute the unlawful practice of medicine under this article if the entity does not direct or control independent medical acts, decisions, or judgment of the licensed physician. However, if the direction or control is done by the entity under IC 34-30-15 (or IC 34-4-12.6 before its repeal), the entity is excluded from the application of this article as it relates to the unlawful practice of medicine or osteopathic medicine.

(d) This subsection does not apply to a prescription or drug order for a legend drug that is filled or refilled in a pharmacy owned or operated by a hospital licensed under IC 16-21. A physician licensed in Indiana who permits or authorizes a person to fill or refill a prescription or drug order for a legend drug except as authorized in IC 16-42-19-11 through IC 16-42-19-19 is subject to disciplinary action under IC 25-1-9. A person who violates this subsection commits the unlawful practice of medicine under this chapter.

(e) A person described in subsection (a)(8) shall not be authorized to dispense contraceptives or birth control devices.

SECTION 21. IC 25-23-1-27.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27.1. (a) As used in this section, "licensed health professional" means:

- (1) a registered nurse;
- (2) a licensed practical nurse;
- (3) a physician with an unlimited license to practice medicine or osteopathic medicine;
- (4) a licensed dentist;
- (5) a licensed chiropractor;
- (6) a licensed optometrist;
- (7) a licensed pharmacist;
- (8) a licensed physical therapist;
- (9) a licensed psychologist;
- (10) a licensed podiatrist; or
- (11) a licensed speech-language pathologist or audiologist.

(b) This chapter does not prohibit:

- (1) furnishing nursing assistance in an emergency;
- (2) the practice of nursing by any student enrolled in a board approved nursing education program where such practice is incidental to the student's program of study;
- (3) the practice of any nurse who is employed by the government of the United States or any of its bureaus, divisions, or agencies while in the discharge of the nurse's official duties;
- (4) the gratuitous care of sick, injured, or infirm individuals by friends or the family of that individual;
- (5) the care of the sick, injured, or infirm in the home for compensation if the person assists only:
  - (A) with personal care;
  - (B) in the administration of a domestic or family remedy; or
  - (C) in the administration of a remedy that is ordered by a licensed health professional and that is within the scope of practice of the licensed health professional under Indiana law;
- (6) performance of tasks by persons who provide health care services which are delegated or ordered by licensed health professionals, if the delegated or ordered tasks do not exceed the scope of practice of the licensed health professionals under

Indiana law;

(7) a physician with an unlimited license to practice medicine or osteopathic medicine in Indiana, a licensed dentist, chiropractor, dental hygienist, optometrist, pharmacist, physical therapist, podiatrist, psychologist, speech-language pathologist, or audiologist from practicing the person's profession;

(8) a school corporation or school employee from acting under IC 34-30-14;

(9) a personal services attendant from providing authorized attendant care services under IC 12-10-17; or

(10) an attendant who provides attendant care services (as defined by ~~IC 16-27-1-0.5~~, **in IC 16-18-2-28.5**).

SECTION 22. IC 25-26-13-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The board may:

- (1) promulgate rules and regulations under IC 4-22-2 for implementing and enforcing this chapter;
- (2) establish requirements and tests to determine the moral, physical, intellectual, educational, scientific, technical, and professional qualifications for applicants for pharmacists' licenses;
- (3) refuse to issue, deny, suspend, or revoke a license or permit or place on probation or fine any licensee or permittee under this chapter;
- (4) regulate the sale of drugs and devices in the state of Indiana;
- (5) impound, embargo, confiscate, or otherwise prevent from disposition any drugs, medicines, chemicals, poisons, or devices which by inspection are deemed unfit for use or would be dangerous to the health and welfare of the citizens of the state of Indiana; the board shall follow those embargo procedures found in IC 16-42-1-18 through IC 16-42-1-31, and persons may not refuse to permit or otherwise prevent members of the board or their representatives from entering such places and making such inspections;
- (6) prescribe minimum standards with respect to physical characteristics of pharmacies, as may be necessary to the maintenance of professional surroundings and to the protection of the safety and welfare of the public;
- (7) subject to IC 25-1-7, investigate complaints, subpoena witnesses, schedule and conduct hearings on behalf of the public interest on any matter under the jurisdiction of the board;
- (8) prescribe the time, place, method, manner, scope, and subjects of licensing examinations which shall be given at least twice annually; and
- (9) perform such other duties and functions and exercise such other powers as may be necessary to implement and enforce this chapter.

(b) The board shall adopt rules under IC 4-22-2 for the following:

- (1) Establishing standards for the competent practice of pharmacy.
- (2) Establishing the standards for a pharmacist to counsel individuals regarding the proper use of drugs.
- (3) **Establishing standards and procedures before January 1, 2006, to ensure that a pharmacist:**

**(A) has entered into a contract that accepts the return of expired drugs with; or**

**(B) is subject to a policy that accepts the return of expired drugs of;**

**a wholesaler, manufacturer, or agent of a wholesaler or manufacturer concerning the return by the pharmacist to the wholesaler, the manufacturer, or the agent of expired legend drugs or controlled drugs. In determining the standards and procedures, the board may not interfere with negotiated terms related to cost, expenses, or reimbursement charges contained in contracts between parties, but may consider what is a reasonable quantity of a drug to be purchased by a pharmacy. The standards and procedures do not apply to vaccines that prevent influenza, medicine used for the treatment of malignant hyperthermia, and other drugs determined by the board to not be subject to a return policy. An agent of a wholesaler or manufacturer must be appointed in writing and have policies, personnel, and facilities to handle properly returns of expired legend drugs and controlled substances.**

(c) The board may grant or deny a temporary variance to a rule it has adopted if:

- (1) the board has adopted rules which set forth the procedures and standards governing the grant or denial of a temporary variance; and
- (2) the board sets forth in writing the reasons for a grant or denial of a temporary variance.

SECTION 23. IC 25-26-14-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) This chapter applies to any individual, partnership, limited liability company, corporation, or business firm:

- (1) located in or outside Indiana; and
- (2) engaging in the wholesale distribution of legend drugs within in Indiana.

(b) Except as required by federal law or regulation, the requirements of this chapter do not apply to a manufacturer that is approved by the federal Food and Drug Administration. However, the board may adopt rules concerning manufacturers that the board considers appropriate and necessary.

SECTION 24. IC 25-26-14-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1.5. As used in this chapter, "adulterated" refers to a legend drug that:

- (1) consists in whole or in part of a filthy, putrid, or decomposed substance;
- (2) has been produced, prepared, packed, or held under unsanitary conditions and may have been contaminated or rendered injurious to health;
- (3) has been subjected to conditions in the manufacture, processing, packing, or holding of the legend drug that do not conform to current standards of manufacturing to ensure that the legend drug is safe for use and possesses the identity, strength, quality, and purity characteristics that the legend drug is represented to possess;
- (4) is contained in a container composed of a poisonous or deleterious substance that may render the legend drug injurious to health;
- (5) bears or contains, for purposes of coloring only, a color additive that is unsafe;
- (6) is of a different strength, quality, or purity from the official compendium standard for the legend drug; or
- (7) does not meet the considerations of the federal Food, Drug, and Cosmetic Act.

SECTION 25. IC 25-26-14-1.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1.7. As used in this chapter, "authenticate" means to affirmatively verify before distribution occurs that each transaction that is listed on:

- (1) the pedigree of a legend drug; and
- (2) other accompanying documentation for a legend drug; has occurred.

SECTION 26. IC 25-26-14-1.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1.8. As used in this chapter, "authorized distributor" means a wholesale drug distributor with which a manufacturer has established an ongoing relationship to distribute the manufacturer's products. For purposes of this section, an ongoing relationship exists between a wholesale drug distributor, including any affiliated group (as defined in Section 1504 of the Internal Revenue Code) of which the wholesale distributor is a member, and a manufacturer if the wholesale drug distributor:

- (1) has a written agreement currently in effect with the manufacturer evidencing an ongoing relationship;
- (2) is listed on the manufacturer's current monthly updated list of authorized distributors; or
- (3) has a verifiable account with the manufacturer and a minimal transaction or volume requirement limit of:
  - (A) five thousand (5,000) units per company in the previous twelve (12) months; or
  - (B) twelve (12) purchases at the manufacturer's minimum purchasing requirement per invoice in the previous twelve (12) months.

SECTION 27. IC 25-26-14-4.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 4.1. As used in this chapter, "co-licensed products" means pharmaceutical products:

- (1) that have been approved by the federal Food and Drug Administration; and
- (2) concerning which two (2) or more parties have the right to engage in a business activity or occupation concerning the pharmaceutical products.

SECTION 28. IC 25-26-14-4.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 4.2. As used in this chapter, "compendium" refers to:

- (1) the United States Pharmacopoeia;
- (2) the Homeopathic Pharmacopoeia of the United States;
- (3) the National Formulary;
- (4) a drug approved by the federal Food and Drug Administration; or
- (5) a supplement to a document specified in subdivision (1), (2), or (3).

SECTION 29. IC 25-26-14-4.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 4.3. As used in this chapter, "contraband" refers to a legend drug:

- (1) that is counterfeit;
- (2) that is stolen;
- (3) that is misbranded;
- (4) that is obtained by fraud;
- (5) that is purchased by a nonprofit institution for the nonprofit institution's own use and placed in commerce in violation of the own use agreement for the legend drug;
- (6) for which a required pedigree does not exist; or
- (7) for which a pedigree in existence:
  - (A) has been forged, counterfeited, or falsely created; or
  - (B) contains any altered, false, or misrepresented information.

SECTION 30. IC 25-26-14-4.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 4.4. As used in this chapter, "counterfeit" refers to a legend drug, or the container, seal, or labeling of a legend drug, that, without authorization, bears the trademark, trade name, or other identifying mark or imprint of a manufacturer, processor, packer, or distributor other than the person that manufactured, processed, packed, or distributed the legend drug.

SECTION 31. IC 25-26-14-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 4.5. As used in this chapter, "deliver" means the actual, constructive, or attempted transfer of a legend drug from one (1) person to another.

SECTION 32. IC 25-26-14-4.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 4.6. As used in this chapter, "designated representative" means an individual who:

- (1) is designated by a wholesale drug distributor;
- (2) serves as the wholesale drug distributor's responsible individual with the board; and
- (3) is actively involved in and aware of the actual daily operation of the wholesale drug distributor.

SECTION 33. IC 25-26-14-4.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 4.7. As used in this chapter, "distribute" means to sell, offer to sell, deliver, offer to deliver, broker, give away, or transfer a legend drug, whether by passage of title or physical movement, or both. The term does not include the following:

- (1) Dispensing or administering a legend drug.
- (2) Delivering or offering to deliver a legend drug by a common carrier in the usual course of business as a common carrier.
- (3) The provision of a legend drug sample to a patient by a:
  - (A) practitioner;
  - (B) health care professional acting at the direction and

under the supervision of a practitioner; or  
 (C) hospital's or other health care entity's pharmacy that received the drug sample in accordance with this chapter and other applicable law to administer or dispense and that is acting at the direction of a practitioner;

licensed to prescribe the legend drug.

SECTION 34. IC 25-26-14-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. As used in this chapter, "health care entity" means any organization or business that provides diagnostic, medical, surgical, dental treatment, or rehabilitative care. **The term does not include a pharmacy or wholesale drug distributor.**

SECTION 35. IC 25-26-14-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 6.5. As used in this chapter, "label" means a display of written, printed, or graphic matter on the immediate container of a legend drug.

SECTION 36. IC 25-26-14-6.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 6.6. As used in this chapter, "labeling" means labels and other written, printed, or graphic matter:

(1) on a legend drug or a legend drug's container or wrapper; or

(2) accompanying a legend drug.

SECTION 37. IC 25-26-14-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. As used in this chapter, "legend drug" has the meaning set forth in IC 16-18-2-199. The term includes any human drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to 21 U.S.C. 811 through 812. **The term does not include a device or a device component, part, or accessory.**

SECTION 38. IC 25-26-14-8.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 8.3. As used in this chapter, "misbranded" means that a legend drug's label:

(1) is false or misleading;

(2) does not bear the name and address of the manufacturer, packer, or distributor or does not contain an accurate statement of the quantities of active ingredients of the legend drug;

(3) does not show an accurate monograph for the legend drug; or

(4) does not comply with any other requirements of the federal Food, Drug, and Cosmetic Act.

SECTION 39. IC 25-26-14-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 8.5. As used in this chapter, "normal distribution chain of custody" means the route that a legend drug travels:

(1) from a manufacturer to a wholesale drug distributor, to a pharmacy, and to a patient or a patient's agent;

(2) from a manufacturer to a wholesale drug distributor, to a chain drug warehouse, to a pharmacy affiliated with the chain drug warehouse, and to a patient or a patient's agent;

(3) from a manufacturer to a chain drug warehouse, to a pharmacy affiliated with the chain drug warehouse, and to a patient or a patient's agent;

(4) from a manufacturer to a third party logistics provider, to a wholesale drug distributor, to a pharmacy, and to a patient or a patient's agent;

(5) from a manufacturer to a third party logistics provider, to a wholesale drug distributor, to a chain drug warehouse, to a pharmacy affiliated with the chain drug warehouse, and to a patient or a patient's agent;

(6) from a manufacturer to a third party logistics provider, to a chain drug warehouse, to a pharmacy affiliated with the chain drug warehouse, and to a patient or a patient's agent; or

(7) as prescribed by rules adopted by the board.

SECTION 40. IC 25-26-14-8.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

[EFFECTIVE JANUARY 1, 2006]: Sec. 8.7. As used in this chapter, "pedigree" means a statement or record in a written or an electronic form that is approved by the board, that records each distribution of a legend drug from the sale by the manufacturer from the last authorized distributor of record through acquisition and sale by each wholesale drug distributor, and that includes information designated by the board through rules for each transaction.

SECTION 41. IC 25-26-14-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. As used in this chapter, "person" means an individual, a partnership, a business firm, a limited liability company, **or** a corporation, **or another entity, including a governmental entity.**

SECTION 42. IC 25-26-14-9.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 9.2. As used in this chapter, "practitioner" has the meaning set forth in IC 16-42-19-5.

SECTION 43. IC 25-26-14-9.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 9.3. As used in this chapter, "repackage" means changing the container, wrapper, quantity, or labeling of a legend drug to further the distribution of the legend drug.

SECTION 44. IC 25-26-14-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 10.5. As used in this chapter, "third party logistics provider" means an entity that:

(1) provides or coordinates warehousing, distribution, or other services on behalf of a manufacturer, but does not take title to the legend drug or have general responsibility to direct the legend drug's sale or disposition; and

(2) is licensed under this chapter.

SECTION 45. IC 25-26-14-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 11. As used in this chapter, "wholesale distribution" means ~~distribution of~~ **distribute** legend drugs to persons other than a consumer or patient.

The term does not include:

(1) a sale **or transfer** between a division, a subsidiary, a parent, an affiliated, or a related company under the common ownership and control of a corporate entity;

(2) the purchase or acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for the hospital's or health care entity's own use from the group purchasing organization or from other hospitals or health care entities that are members of the organization;

(3) the sale of a drug by a charitable organization described in Section 501(c)(3) of the Internal Revenue Code, to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(4) the sale of a drug among hospitals or other health care entities that are under common control;

(5) the sale of a drug for emergency medical reasons, including transfers of legend drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage, if the gross dollar value of the transfers does not exceed five percent (5%) of the total legend drug sales revenue of either the transferor or transferee pharmacy during any twelve (12) consecutive month period;

(6) the sale of a drug or the dispensing of a drug pursuant to a prescription;

(7) the distribution of drug samples by manufacturers' representatives or distributors' representatives;

(8) the sale of blood and blood components intended for transfusion;

(9) the sale of a drug by a retail pharmacy to a practitioner (as defined in IC 25-26-13-2) for office use, if the gross dollar value of the transfers does not exceed five percent (5%) of the retail pharmacy's total legend drug sales during any twelve (12) consecutive months; **or**

(10) the sale of a drug by a retail pharmacy that is ending its business and liquidating its inventory to another retail pharmacy;

- (11) drug returns by a hospital, health care entity, or charitable institution conducted under 21 CFR 203.23;
- (12) the sale of minimal quantities of drugs by retail pharmacies to licensed practitioners for office use;
- (13) the distribution of prescription drugs by the original manufacturer of the finished form of the prescription drug or the distribution of the co-licensed products by a partner of the original manufacturer of the finished form of the prescription drug; or
- (14) drug returns that meet criteria established by rules adopted by the board.

SECTION 46. IC 25-26-14-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) ~~After September 14, 1992~~, A person may not engage in wholesale distributions of legend drugs without: ~~having~~

- (1) **after December 31, 2005, obtaining and maintaining accreditation or certification from the National Association of Boards of Pharmacy's Verified Accredited Wholesale Distributor or an accreditation body approved by the board under subsection (g);**
- (2) **obtaining and maintaining a license from issued by the board;** and
- (3) paying any reasonable fee required by the board.
- (b) The board may not issue or renew the license of a wholesale drug distributor that does not comply with this chapter.
- (c) The board ~~may~~ **shall** require a separate license for
  - (1) ~~each facility directly or indirectly owned or operated by the same business in Indiana; or~~
  - (2) ~~a parent entity with divisions, subsidiaries, or affiliate companies in Indiana when operations are conducted at more than one (1) location and there exists joint ownership and control among all the entities; or location where wholesale distribution operations are conducted.~~
- (d) An agent or employee of any licensed wholesale drug distributor does not need a license and may lawfully possess pharmaceutical drugs when acting in the usual course of business or employment.
- (e) The issuance of a license under this chapter does not affect tax liability imposed by the department of state revenue or the department of local government finance on any wholesale drug distributor.
- (f) The board may adopt rules that permit out-of-state wholesale drug distributors to obtain a license on the basis of reciprocity if:
  - (1) an out-of-state wholesale drug distributor possesses a valid license granted by another state and the legal standards for licensure in the other state are comparable to the standards under this chapter; and
  - (2) the other state extends reciprocity to wholesale drug distributors licensed in Indiana.

**However, if the requirements for licensure under this chapter are more restrictive than the standards of the other state, the out-of-state wholesale drug distributor must comply with the additional requirements of this chapter to obtain a license under this chapter.**

(g) The board may adopt rules under IC 4-22-2 to approve an accreditation body to:

- (1) evaluate a wholesale drug distributor's operations to determine compliance with:
  - (A) professional standards;
  - (B) this chapter; and
  - (C) any other applicable law; and
- (2) perform inspections of each facility and location where wholesale distribution operations are conducted by the wholesale drug distributor.

SECTION 47. IC 25-26-14-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14.5. **After June 30, 2006, a wholesale drug distributor may not accept or deliver a legend drug without a current, accompanying pedigree.**

SECTION 48. IC 25-26-14-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 15. (a) The board shall require the following minimum information from each wholesale drug distributor as part of the license described in section 14 of this chapter and as part of any renewal of such license:

- (1) The name, full business address, and telephone number of the licensee.
  - (2) All trade or business names used by the licensee.
  - (3) Addresses, telephone numbers, and the names of contact persons for all facilities used by the licensee for the storage, handling, and distribution of legend drugs.
  - (4) The type of ownership of operation.
  - (5) The name of each owner and operator of the licensee, including:
    - (A) if an individual, the name, **address, Social Security number, and date of birth** of the individual;
    - (B) if a partnership, the name, **address, Social Security number, and date of birth** of each partner, and the name of the partnership **and federal employer identification number;**
    - (C) if a corporation:
      - (i) the name, **address, Social Security number, date of birth,** and title of each corporate officer and director;
      - (ii) the corporate names, ~~and~~ the name of the state of incorporation, **the federal employer identification number, and the name of the parent company, if any; and**
      - (iii) **the name, address, and Social Security number of each shareholder owning ten percent (10%) or more of the voting stock of the corporation, unless the stock is traded on a major stock exchange and not traded over the counter;**
    - (D) if a limited liability company, the name of each manager and member, the name **and federal employer identification number** of the limited liability company, and the name of the state where organized; and
    - (E) if a sole proprietorship, the full name, **address, Social Security number, and date of birth** of the sole proprietor and the name **and federal employer identification number** of the business entity.
  - (6) The name, **address, and telephone number** of the ~~person~~ designated by the licensee as responsible for the operation ~~representative of the facilities; each facility.~~
  - (7) **Additional information concerning record keeping required under this chapter.**
  - (b) **The board shall require a wholesale drug distributor to post a surety bond of at least one hundred thousand dollars (\$100,000), or an equivalent means of security acceptable to the board, including insurance, an irrevocable letter of credit, or funds deposited in a trust account or financial institution, to secure payment of any administrative penalties that may be imposed by the board and any fees and costs that may be incurred by the board and that:**
    - (1) are related to a license held by the wholesale drug distributor;
    - (2) are authorized under Indiana law; and
    - (3) the wholesale drug distributor fails to pay less than thirty (30) days after the penalties, fees, or costs become final.
- However, a separate surety bond or an equivalent means of security is not required for a separate location or a company of the wholesale drug distributor.**
- (c) The board may make a claim against a bond or security posted under subsection (b) within one (1) year after the wholesale drug distributor's license is no longer valid or sixty (60) days after the conclusion of:
    - (1) an administrative or legal proceeding before or on behalf of the board that involves the wholesale drug distributor and results in penalties, fees, or costs described in subsection (b); or
    - (2) an appeal of a proceeding described in subdivision (1); whichever occurs later.
  - (d) The board shall inspect each facility where wholesale distribution operations are conducted before initial licensure and periodically thereafter in accordance with a schedule determined by the board, but at least one (1) time in each three (3) year period.
  - (e) **A wholesale drug distributor must publicly display or have**

readily available all licenses and the most recent inspection report administered by the board.

(b) (f) A material change in any information in ~~subsection (a)~~ of this section must be submitted to the board at the time of license renewal or within thirty (30) days from the date of the change, whichever occurs first.

SECTION 49. IC 25-26-14-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: **Sec. 15.5. (a) A wholesale drug distributor that is an authorized distributor of a manufacturer is not considered to be an authorized distributor of the manufacturer under this chapter unless:**

- (1) the manufacturer files the manufacturer's monthly updated list of authorized distributors with the board;
- (2) the list is available from the manufacturer upon request or on the Internet; and
- (3) the manufacturer notifies the board of any change to the list within ten (10) days after the change.

(b) The board shall make available on the board's Internet web site a manufacturer's list of authorized distributors filed as described in subsection (a).

SECTION 50. IC 25-26-14-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 16. (a)** In reviewing, for purposes of licensure or renewal of a license under this chapter, the qualifications of persons who engage in wholesale distribution of legend drugs ~~within~~ in Indiana, the board shall consider the following factors:

- (1) A conviction of the applicant relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances; finding by the board that the applicant has:

- (A) violated a law; or
- (B) been disciplined by a regulatory agency for violating a law;

related to drug distribution in any state.

- (2) A felony criminal conviction of the applicant.

- (3) The applicant's past experience in the manufacture or distribution of legend drugs, including controlled substances.

- (4) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug manufacturing or distribution.

- (5) Suspension or revocation of any license held by the applicant or the applicant's owner or the imposition of sanctions against the applicant or the applicant's owner by the federal or a state or local government of any license held by the applicant for the manufacture or distribution of any drugs, including controlled substances.

- (6) Compliance with licensing requirements under previously granted licenses.

- (7) Compliance with requirements to maintain and make available to the board or to federal, state, or local law enforcement officials those records required under this chapter.

- (8) Any other factors or qualifications the board considers relevant to the public health and safety, including whether the granting of the license would not be in the public interest.

(b) After December 31, 2005, in reviewing an application for licensure or renewal of a license under this chapter, the board shall consider the results of a national criminal history background check (as defined in IC 10-13-3-12) for:

- (1) the applicant;
- (2) all personnel involved in the operations of the wholesale drug distributor;
- (3) the most senior individual responsible for facility operations, purchasing, and inventory control, and the individual to whom the senior individual reports;
- (4) company officers;
- (5) key management personnel;
- (6) principals; and
- (7) owners with at least a ten percent (10%) interest in the wholesale drug distributor, if the wholesale drug distributor is a nonpublicly held company.

The national criminal history background check must be conducted at the applicant's expense and must include all states

of residence since the applicant became eighteen (18) years of age.

(c) After December 31, 2005, an applicant shall provide and attest to:

- (1) an affirmation that the applicant has not been involved in or convicted of any criminal or prohibited acts; or
- (2) a statement providing a complete disclosure of the applicant's past criminal convictions and violations of state and federal laws;

regarding drugs.

SECTION 51. IC 25-26-14-16.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: **Sec. 16.5. (a)** A wholesale drug distributor shall designate in writing on a form prescribed by the board a designated representative for each of the wholesale drug distributor's facilities licensed under this chapter.

(b) A designated representative shall submit to the board an application prescribed by the board and provide to the board the following:

- (1) A set of the designated representative's fingerprints, under procedures specified by the board and according to requirements of the state police department under IC 10-13-3-38.5, with payment of the amount equal to the costs of a national criminal history background check (as defined in IC 10-13-3-12) of the designated representative to be obtained by the state police department.

- (2) The date and place of birth of the designated representative.

- (3) A list of the occupations, positions of employment, and offices held by the designated representative during the immediately preceding seven (7) years, including the principal business and address of the organization with which the occupation, position, or office was associated.

- (4) A statement concerning whether the designated representative, during the immediately preceding seven (7) years, has been temporarily or permanently enjoined by a court from violating a state or federal law regulating the possession, control, or distribution of legend drugs, including details of related events.

- (5) A description of any involvement by the designated representative with a business that:

- (A) manufactured, administered, prescribed, distributed, or stored legend drugs; and

- (B) was named as a party in a lawsuit;

during the immediately preceding seven (7) years, including investments other than the ownership of stock in a publicly traded company or mutual fund.

- (6) A description of any criminal offense of which the designated representative has been convicted, regardless of whether adjudication of guilt was withheld or whether the designated representative pleaded nolo contendere. If the designated representative indicates that a criminal conviction is under appeal, the designated representative shall submit to the board:

- (A) a copy of the notice of appeal; and

- (B) a copy of the final written order of disposition.

- (7) A photograph of the designated representative taken within the immediately preceding thirty (30) days under procedures specified by the board.

- (8) A list of the name, address, occupation, and date and place of birth of each member of the designated representative's immediate family, including the designated representative's spouse, children, parents, and siblings, and the spouses of the designated representative's children and siblings. Information collected under this subdivision is confidential.

- (9) Any other information required by the board.

(c) A designated representative must have at least two (2) years of verifiable full-time managerial or supervisory experience in a pharmacy or with a wholesale drug distributor licensed under this chapter or in another state. The designated representative's responsibilities must have included record keeping, storage, and shipment of legend drugs.

(d) A designated representative shall not serve as the designated representative for more than one (1) wholesale drug



distributor facility at any one (1) time.

(e) A designated representative shall be actively involved and aware of the actual daily operations of the wholesale drug distributor as follows:

- (1) Be employed full time in a managerial position by the wholesale drug distributor.
- (2) Be physically present at the wholesale drug distributor's facility during normal business hours, except when absent due to illness, family illness or death, scheduled vacation, or another authorized absence.
- (3) Be aware of and knowledgeable about all policies and procedures pertaining to the operations of the wholesale drug distributor.

(f) A designated representative must complete continuing education programs specified by the board regarding state and federal law relevant to the distribution, handling, and storage of legend drugs.

(g) A third party logistics provider must comply with this subsection until the third party logistics provider has obtained accreditation. A third party logistics provider must identify to the board a designated representative who is responsible for the facility's compliance with applicable state and federal law. The designated representative:

- (1) may be a corporate employee or officer, outside counsel, or an outside consulting specialist with authority to help ensure compliance;
- (2) may be responsible for multiple facilities; and
- (3) is not required to be physically present at the facility.

SECTION 52. IC 25-26-14-16.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 16.6. (a) A wholesale drug distributor that:

- (1) is licensed under this chapter;
- (2) is located outside Indiana; and
- (3) distributes legend drugs in Indiana;

shall designate an agent in Indiana for service of process.

(b) A wholesale drug distributor that does not designate an agent under subsection (a) is considered to have designated the secretary of state to be the wholesale drug distributor's true and lawful attorney, upon whom legal process may be served in an action or a proceeding against the wholesale drug distributor arising from the wholesale drug distributor's wholesale distribution operations.

(c) The board shall mail a copy of any service of process to a wholesale drug distributor by certified mail, return receipt requested, postage prepaid, at the address designated by the wholesale drug distributor on the application for licensure submitted under this chapter.

(d) Service of process on the secretary of state is sufficient in an action or a proceeding against a wholesale drug distributor that is not licensed under this chapter.

SECTION 53. IC 25-26-14-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 17. As a condition for receiving and retaining any a wholesale drug distributor license issued under to this chapter, each an applicant must satisfy the board that the applicant has and will continuously maintain the following:

- (1) Acceptable storage and handling conditions and facilities standards for each facility at which legend drugs are received, stored, warehoused, handled, held, offered, marketed, or displayed, or from which legend drugs are transported, including:

- (A) suitable construction of the facility and appropriate monitoring equipment to ensure that legend drugs in the facility are maintained in accordance with labeling or in compliance with official compendium standards;
- (B) suitable size and construction to facilitate cleaning, maintenance, and proper wholesale distribution operations;
- (C) adequate storage areas to provide appropriate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;
- (D) a quarantine area for separate storage of legend drugs that are outdated, damaged, deteriorated,

misbranded, adulterated, counterfeit, suspected counterfeit, otherwise unfit for distribution, or contained in immediate or sealed secondary containers that have been opened;

(E) maintenance of the facility in a clean and orderly condition;

(F) maintenance of the facility in a commercial, nonresidential building; and

(G) freedom of the facility from infestation.

(2) Security of each facility from unauthorized entry as follows:

(A) Entry into areas where legend drugs are held is limited to authorized personnel.

(B) Each facility is equipped with a security system that includes:

~~(A)~~ (i) an after hours central alarm or a comparable entry detection capability;

~~(B)~~ (ii) restricted premises access;

~~(C)~~ (iii) adequate outside perimeter lighting; and

~~(D)~~ (iv) safeguards against theft and diversion, including employee theft and theft or diversion facilitated or hidden by tampering with computers or electronic records; and

(v) a means of protecting the integrity and confidentiality of data and documents and of making the data and documents readily available to the board and other state and federal law enforcement officials.

(3) A reasonable system of record keeping that as follows:

(A) The system describes all the wholesale distributor's activities governed by this chapter for the two ~~(2)~~ three (3) year period after the disposition of each product, and all records are maintained for at least three (3) years after disposition of the legend drug to which the record applies.

(B) The system is reasonably accessible as determined by board rules in any inspection authorized by the board.

(C) The system provides a means to establish and maintain inventories and records of transactions regarding the receipt and distribution or other disposition of all legend drugs, including the following:

(i) For legend drugs manufactured by a manufacturer for which the wholesale drug distributor is an authorized distributor, a pedigree for each distributed legend drug that leaves the normal distribution chain of custody, as determined by rules adopted by the board.

(ii) For legend drugs manufactured by a manufacturer for which the wholesale drug distributor is not an authorized distributor, a pedigree for each distributed legend drug.

(iii) After January 1, 2007, and after consulting with the federal Food and Drug Administration, at the board's discretion, for each legend drug received and distributed by the wholesale drug distributor, an electronic pedigree developed in accordance with standards and requirements of the board to authenticate, track, and trace legend drugs. The standards and requirements of the board may indicate the information required to be part of the electronic pedigree.

(iv) Dates of receipt and distribution or other disposition of the legend drugs by the wholesale drug distributor.

(v) Availability for inspection and photocopying by any authorized official of a local, state, or federal governmental agency for three (3) years after the creation date of the inventories and records.

(D) Onsite electronic inventories and records are immediately available for inspection, and records kept at a central location apart from the inspection site and not electronically retrievable are available for inspection within two (2) working days after a request by an authorized official of a local, state, or federal

- governmental agency.
- (E) The system maintains an ongoing list of persons with whom the wholesale drug distributor does business.
- (F) The system provides for reporting counterfeit or suspected counterfeit legend drugs or counterfeiting or suspected counterfeiting activities to the board and the federal Food and Drug Administration.
- (G) The system provides for mandatory reporting of significant shortages or losses of legend drugs to the board and the federal Food and Drug Administration if diversion is known or suspected.
- (4) Written policies and procedures to which the wholesale drug distributor adheres for the receipt, security, storage, inventory, transport, shipping, and distribution of legend drugs, and that assure reasonable wholesale distributor preparation for, protection against, and handling of any facility security or operation problems, including the following:
- (A) ~~those~~ Facility security or operation problems caused by natural disaster or government emergency.
  - (B) ~~Correction of~~ inventory inaccuracies. ~~or~~
  - (C) Product shipping and receiving problems.
  - ~~(D)~~ (D) Quarantine and return to the manufacturer or destruction in accordance with state and federal law of all outdated ~~product~~ products and outdated or expired legend drugs, including appropriate documentation and witnessing.
  - ~~(E)~~ (E) Appropriate disposition of returned goods. ~~and~~
  - ~~(F)~~ (F) Product recalls.
  - (G) Identifying, recording, and reporting losses or thefts.
  - (H) Implementation and maintenance of a continuous quality improvement system.
  - (I) Recalls and withdrawals of legend drugs due to:
    - (i) an action initiated by the federal Food and Drug Administration or another federal, state, or local governmental agency;
    - (ii) a volunteer action by the manufacturer to remove defective or potentially defective legend drugs from the market; or
    - (iii) an action undertaken to promote public health and safety by replacing existing merchandise with an improved product or a new package design.
  - (J) Disposition and destruction of containers, labels, and packaging to ensure that the containers, labels, and packaging are not used in counterfeiting activities, including necessary documentation and witnessing in accordance with state and federal law.
  - (K) Investigation of discrepancies in the inventory involving counterfeit, suspected counterfeit, contraband, or suspected contraband legend drugs and reporting of discrepancies within three (3) business days to the board and any other appropriate state or federal governmental agency.
  - (L) Reporting of criminal or suspected criminal activities involving the inventory of legend drugs to the board within three (3) business days.
  - (M) Conducting for cause authentication and random authentication as required under sections 17.2, 17.3, and 17.8 of this chapter.
- (5) Written policies and procedures and sufficient inspection procedures for all incoming and outgoing product shipments, including the following:
- (A) Upon receipt, visual examination of each shipping container in a manner adequate to identify the legend drugs in the container and to determine whether the legend drugs may be outdated, adulterated, misbranded, contaminated, contraband, counterfeit, suspected counterfeit, damaged, or otherwise unfit for distribution.
  - (B) Upon receipt, review of records by the wholesale drug distributor for the acquisition of legend drugs for accuracy and completeness, considering the:
    - (i) total facts and circumstances surrounding each transaction involving the legend drugs; and
    - (ii) wholesale drug distributors involved.

(C) Quarantine of a legend drug considered to be outdated, adulterated, misbranded, contaminated, contraband, counterfeit, suspected counterfeit, damaged, or otherwise unfit for distribution until:

- (i) examination and a determination that the legend drug is not outdated, adulterated, misbranded, contaminated, contraband, counterfeit, damaged, or otherwise unfit for distribution; or
- (ii) the legend drug is destroyed or returned to the manufacturer or wholesale drug distributor from which the legend drug was acquired.

(D) Written policies and procedures to ensure that a legend drug that was:

- (i) ordered in error or in excess of need by the wholesale drug distributor;
- (ii) identified within three (3) business days after receipt as ordered in error or in excess of need; and
- (iii) maintained such that the legend drug's integrity has not been compromised;

may be returned to the manufacturer or wholesale drug distributor from which the legend drug was acquired if the appropriate documentation is completed and necessary notations are made to a required pedigree.

(E) Written policies and procedures to ensure that if the wholesale drug distributor determines that a legend drug is adulterated, misbranded, counterfeit, or suspected counterfeit, the wholesale drug distributor provides notice of the adulteration, misbranding, counterfeiting, or suspected counterfeiting to the board, the federal Food and Drug Administration, and the manufacturer or wholesale drug distributor from which the legend drug was acquired within three (3) business days.

(F) Written policies and procedures to ensure that if the immediate or sealed outer or secondary container or labeling of a legend drug is adulterated, misbranded, counterfeit, or suspected counterfeit, the wholesale drug distributor:

- (i) quarantines the legend drug until the legend drug is destroyed or returned to the manufacturer or wholesale drug distributor from which the legend drug was acquired; and
- (ii) provides notice of the adulteration, misbranding, counterfeiting, or suspected counterfeiting to the board, the federal Food and Drug Administration, and the manufacturer or wholesale drug distributor from which the legend drug was acquired within three (3) business days.

(G) Written policies and procedures to ensure that a legend drug that has been opened or used, but is not adulterated, misbranded, counterfeit, or suspected counterfeit, is identified as such and quarantined until the legend drug is destroyed or returned to the manufacturer or wholesale drug distributor from which the legend drug was acquired.

(H) Written policies and procedures to ensure that:

- (i) a legend drug that will be returned to a manufacturer or wholesale drug distributor is kept under proper conditions for storage, handling, transport, and shipment before the return; and
- (ii) documentation showing that proper conditions were maintained is provided to the manufacturer or wholesale drug distributor to which the legend drug is returned.

(I) Inspection of each outgoing shipment for identity of the legend drugs and to ensure that the legend drugs have not been damaged in storage or held under improper conditions.

(J) Written policies and procedures to ensure that if conditions under which a legend drug has been returned to the wholesale drug distributor cast doubt on the legend drug's safety, identity, strength, quality, or purity, the legend drug is destroyed or returned to the manufacturer or wholesale drug distributor from which the legend drug was acquired unless examination, testing,

or other investigation proves that the legend drug meets appropriate standards of safety, identity, strength, quality, and purity. In determining whether the conditions under which a legend drug has been returned cast doubt on the legend drug's safety, identity, strength, quality, or purity, the wholesale drug distributor considers the conditions under which the legend drug has been held, stored, or shipped before or during the legend drug's return and the condition of the legend drug and the legend drug's container, carton, or labeling upon receipt of the returned legend drug.

(K) Written policies and procedures to ensure that contraband, counterfeit, or suspected counterfeit legend drugs, other evidence of criminal activity, and accompanying documentation are retained until a disposition is authorized by the board and the federal Food and Drug Administration.

(L) Written policies and procedures to ensure that any shipping, immediate, or sealed outer or secondary container or labeling, and accompanying documentation, suspected of or determined to be counterfeit or fraudulent, are retained until a disposition is authorized by the board and the federal Food and Drug Administration.

(6) Operations in compliance with all federal legal requirements applicable to wholesale drug distribution.

(7) Written policies and procedures to provide for the secure and confidential storage of information with restricted access and to protect the integrity and confidentiality of the information.

(8) A pedigree as required under this chapter, including an electronic pedigree developed in accordance with standards and requirements of the board under subdivision (3)(C)(iii).

(9) Appropriate inventory management and control systems to:

(A) prevent; and

(B) allow detection and documentation of; theft, counterfeiting, or diversion of legend drugs.

(10) If the wholesale drug distributor is involved in the distribution of controlled substances, registration with the federal Drug Enforcement Administration and the board and compliance with all laws related to the storage, handling, transport, shipment, and distribution of controlled substances.

(11) Isolation of controlled substances from noncontrolled substances and storage of the controlled substances in a secure area in accordance with federal Drug Enforcement Administration security requirements and standards.

(12) Technology and equipment that allow the wholesale drug distributor to authenticate, track, and trace legend drugs. The technology and equipment meet standards set by the board and are used as required by the board to conduct for cause and random tracking, tracing, and authentication of legend drugs.

(13) Employment, training, and documentation of the training concerning the proper use of the technology and equipment required under subdivision (12).

(14) Packaging operations in accordance with an official compendium allowing the identification of a compromise in the integrity of the legend drugs due to tampering or adverse storage conditions.

SECTION 54. IC 25-26-14-17.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 17.2. (a) A wholesale drug distributor that purchases legend drugs from another wholesale drug distributor and has reason to believe that a legend drug purchased from the other wholesale drug distributor is counterfeit, suspected counterfeit, misbranded, or adulterated shall conduct a for cause authentication of each distribution of the legend drug back to the manufacturer.

(b) A wholesale drug distributor that has engaged in the distribution of a legend drug for which a purchasing wholesale drug distributor conducts a for cause authentication under subsection (a) shall provide, upon request, detailed information

regarding the distribution of the legend drug, including the:

- (1) date of purchase of the legend drug;
- (2) lot number of the legend drug;
- (3) sales invoice number of the legend drug; and
- (4) contact information, including name, address, telephone number, and electronic mail address of the wholesale drug distributor that sold the legend drug.

(c) If a wholesale drug distributor conducts a for cause authentication under subsection (a) and is unable to authenticate each distribution of the legend drug, the wholesale drug distributor shall quarantine the legend drug and report the circumstances to the board and the federal Food and Drug Administration not more than ten (10) business days after completing the attempted authentication.

(d) If a wholesale drug distributor authenticates the distribution of a legend drug back to the manufacturer under subsection (a), the wholesale drug distributor shall maintain records of the authentication for three (3) years and shall produce the records for the board and the federal Food and Drug Administration upon request.

SECTION 55. IC 25-26-14-17.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 17.3. (a) A wholesale drug distributor that purchases legend drugs from another wholesale drug distributor shall, at least annually, conduct a random authentication of a required pedigree on at least ten percent (10%) of sales units of wholesale distributions of legend drugs purchased from other wholesale drug distributors.

(b) A wholesale drug distributor from whom another wholesale drug distributor purchases legend drugs shall cooperate with random authentications of pedigrees described in this section and provide requested information in a timely manner.

(c) If a wholesale drug distributor conducts a random authentication under this section and is unable to authenticate each distribution of the legend drug, the wholesale drug distributor shall quarantine the legend drug and report the circumstances to the board and the federal Food and Drug Administration not more than ten (10) business days after completing the attempted authentication.

SECTION 56. IC 25-26-14-17.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 17.8. (a) A wholesale drug distributor licensed under this chapter that purchases legend drugs from a wholesale drug distributor that is not licensed under this chapter shall act with due diligence as required under this section and rules adopted by the board.

(b) Before the initial purchase of legend drugs from the unlicensed wholesale drug distributor, the licensed wholesale drug distributor shall obtain the following information from the unlicensed wholesale drug distributor:

- (1) A list of states in which the unlicensed wholesale drug distributor is licensed.
- (2) A list of states into which the unlicensed wholesale drug distributor ships legend drugs.
- (3) Copies of all state and federal regulatory licenses and registrations held by the unlicensed wholesale drug distributor.
- (4) The unlicensed wholesale drug distributor's most recent facility inspection reports.
- (5) Information regarding general and product liability insurance maintained by the unlicensed wholesale drug distributor, including copies of relevant policies.
- (6) A list of other names under which the unlicensed wholesale drug distributor does business or has been previously known.
- (7) A list of corporate officers and managerial employees of the unlicensed wholesale drug distributor.
- (8) A list of all owners of the unlicensed wholesale drug distributor that own more than ten percent (10%) of the unlicensed wholesale drug distributor, unless the unlicensed wholesale drug distributor is publicly traded.
- (9) A list of all disciplinary actions taken against the unlicensed wholesale drug distributor by state and federal agencies.

(10) A description, including the address, dimensions, and other relevant information, of each facility used by the unlicensed wholesale drug distributor for legend drug storage and distribution.

(11) A description of legend drug import and export activities of the unlicensed wholesale drug distributor.

(12) A description of the unlicensed wholesale drug distributor's procedures to ensure compliance with this chapter.

(13) A statement:

(A) as to whether; and

(B) of the identity of each manufacturer for which; the unlicensed wholesale drug distributor is an authorized distributor.

(c) Before the initial purchase of legend drugs from an unlicensed wholesale drug distributor, the licensed wholesale drug distributor shall:

(1) request that the board obtain and consider the results of a national criminal history background check (as defined in IC 10-13-3-12) through the state police department of all individuals associated with the unlicensed wholesale drug distributor as specified for licensure of a wholesale drug distributor under section 16(b) of this chapter; and

(2) verify the unlicensed wholesale drug distributor's status as an authorized distributor, if applicable.

(d) If an unlicensed wholesale drug distributor's facility has not been inspected by the board or the board's agent within three (3) years after a contemplated purchase described in subsection (a), the licensed wholesale drug distributor shall conduct an inspection of the unlicensed wholesale drug distributor's facility:

(1) before the initial purchase of legend drugs from the unlicensed wholesale drug distributor; and

(2) at least once every three (3) years unless the unlicensed wholesale drug distributor's facility has been inspected by the board, or the board's agent, during the same period;

to ensure compliance with applicable laws and regulations relating to the storage and handling of legend drugs. A third party may be engaged to conduct the site inspection on behalf of the licensed wholesale drug distributor.

(e) At least annually, a licensed wholesale drug distributor that purchases legend drugs from an unlicensed wholesale drug distributor shall ensure that the unlicensed wholesale drug distributor maintains a record keeping system that meets the requirements of section 17(3) of this chapter.

(f) If a licensed wholesale drug distributor that purchases legend drugs from an unlicensed wholesale drug distributor has reason to believe that a legend drug purchased from the unlicensed wholesale drug distributor is misbranded, adulterated, counterfeit, or suspected counterfeit, the licensed wholesale drug distributor shall conduct a for cause authentication of each distribution of the legend drug back to the manufacturer.

(g) An unlicensed wholesale drug distributor that has engaged in the distribution of a legend drug for which a licensed wholesale drug distributor conducts a for cause authentication under subsection (f) shall provide, upon request, detailed information regarding the distribution of the legend drug, including the:

(1) date of purchase of the legend drug;

(2) lot number of the legend drug;

(3) sales invoice number of the legend drug; and

(4) contact information, including name, address, telephone number, and any electronic mail address of the unlicensed wholesale drug distributor that sold the legend drug.

(h) If a licensed wholesale drug distributor conducts a for cause authentication under subsection (f) and is unable to authenticate each distribution of the legend drug, the licensed wholesale drug distributor shall quarantine the legend drug and report the circumstances to the board and the federal Food and Drug Administration within ten (10) business days after completing the attempted authentication.

(i) If a licensed wholesale drug distributor authenticates the distribution of a legend drug back to the manufacturer under subsection (f), the licensed wholesale drug distributor shall maintain records of the authentication for three (3) years and shall provide the records to the board upon request.

(j) A licensed wholesale drug distributor that purchases legend drugs from an unlicensed wholesale drug distributor shall, at least annually, conduct random authentications of required pedigrees on at least ten percent (10%) of sales units of distributions of legend drugs that were purchased from unlicensed wholesale drug distributors.

(k) An unlicensed wholesale drug distributor from which a licensed wholesale drug distributor has purchased legend drugs shall cooperate with the random authentications of pedigrees under this section and provide requested information in a timely manner.

(l) If a wholesale drug distributor conducts a random authentication under subsection (j) and is unable to authenticate each distribution of the legend drug, the wholesale drug distributor shall quarantine the legend drug and report the circumstances to the board and the federal Food and Drug Administration not more than ten (10) business days after completing the attempted authentication.

SECTION 57. IC 25-26-14-17.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 17.9. A wholesale drug distributor licensed under this chapter may not use a trade name or business name identical to a trade name or business name used by another wholesale drug distributor licensed under this chapter.

SECTION 58. IC 25-26-14-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 20. (a) A person employed in wholesale distribution must have appropriate education or experience to assume responsibility for positions related to compliance with licensing requirements.

(b) After December 31, 2005, before employing a person to be engaged in the operation and handling of legend drugs, a wholesale drug distributor shall request that the board obtain and consider the results of a national criminal history background check (as defined in IC 10-13-3-12) through the state police department for the person.

SECTION 59. IC 25-26-14-21.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 21.5. (a) A person may not perform, cause the performance of, or aid the performance of the following:

(1) The manufacture, repackaging, sale, delivery, holding, or offering for sale of a legend drug that is adulterated, misbranded, counterfeit, suspected counterfeit, or is otherwise unfit for distribution.

(2) The adulteration, misbranding, or counterfeiting of a legend drug.

(3) The receipt of a legend drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected counterfeit, and the delivery or proffered delivery of the legend drug for pay or otherwise.

(4) The alteration, mutilation, destruction, obliteration, or removal of the whole or a part of the labeling of a legend drug or the commission of another act with respect to a legend drug that results in the legend drug being misbranded.

(5) Forging, counterfeiting, simulating, or falsely representing a legend drug using a mark, stamp, tag, label, or other identification device without the authorization of the manufacturer.

(6) The purchase or receipt of a legend drug from a person that is not licensed to distribute legend drugs to the purchaser or recipient.

(7) The sale or transfer of a legend drug to a person that is not authorized under the law of the jurisdiction in which the person receives the legend drug to purchase or receive legend drugs from the person selling or transferring the legend drug.

(8) Failure to maintain or provide records as required under this chapter.

(9) Providing the board, a representative of the board, or a state or federal official with false or fraudulent records or making false or fraudulent statements regarding a matter related to this chapter.

- (10) The wholesale distribution of a legend drug that was:  
 (A) purchased by a public or private hospital or other health care entity;  
 (B) donated or supplied at a reduced price to a charitable organization; or  
 (C) stolen or obtained by fraud or deceit.

(11) Obtaining or attempting to obtain a legend drug by fraud, deceit, misrepresentation, or engaging in fraud, deceit, or misrepresentation in the distribution of a legend drug.

(12) Failure to obtain, authenticate, or provide a required pedigree.

(13) The receipt of a legend drug through wholesale distribution without first receiving a required pedigree attested to as accurate and complete by the wholesale drug distributor.

(14) Distributing a legend drug that was previously dispensed by a retail pharmacy or distributed by a practitioner.

(15) Failure to report an act prohibited by this section.

(b) The board may impose the following sanctions if, after a hearing under IC 4-21.5-3, the board finds that a person has violated subsection (a):

(1) Revoke the wholesale drug distributor's license issued under this chapter if the person is a wholesale drug distributor.

(2) Assess a civil penalty against the person. A civil penalty assessed under this subdivision may not be more than ten thousand dollars (\$10,000) per violation.

SECTION 60. IC 25-26-14-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 26. (a) A person ~~that~~ who knowingly or intentionally engages in the wholesale distribution of a legend drug without a license issued under this chapter commits a Class D felony.

(b) A person who engages in the wholesale distribution of a legend drug and:

(1) who, with intent to defraud or deceive:

(A) fails to obtain or deliver to another person a complete and accurate required pedigree concerning a legend drug before:

- (i) obtaining the legend drug from another person; or
- (ii) transferring the legend drug to another person; or

(B) falsely swears or certifies that the person has authenticated any documents related to the wholesale distribution of legend drugs;

(2) who knowingly or intentionally:

(A) destroys, alters, conceals, or fails to maintain a complete and accurate required pedigree concerning a legend drug in the person's possession;

(B) purchases or receives legend drugs from a person not authorized to distribute legend drugs in wholesale distribution;

(C) sells, barter, brokers, or transfers a legend drug to a person not authorized to purchase the legend drug in the jurisdiction in which the person receives the legend drug in a wholesale distribution;

(D) forges, counterfeits, or falsely creates a pedigree;

(E) falsely represents a factual matter contained in a pedigree; or

(F) fails to record material information required to be recorded in a pedigree; or

(3) who:

(A) possesses a required pedigree concerning a legend drug;

(B) knowingly or intentionally fails to authenticate the matters contained in the pedigree as required; and

(C) distributes or attempts to further distribute the legend drug;

commits a Class D felony.

SECTION 61. IC 25-26-14-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. A wholesale drug distributor that fails to comply with the conditions and requirements described in:

(1) section 17; or

(2) after December 31, 2005, section 17.2, 17.3, 17.8, 17.9, or 20;

of this chapter commits a Class D felony.

SECTION 62. IC 25-33-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) The board shall issue a license to practice psychology to an individual who:

(1) applies in the manner required by the board;

(2) pays a fee;

(3) is at least eighteen (18) years of age;

(4) has not been convicted of a crime that has a direct bearing on the individual's ability to practice competently;

(5) holds, at the time of application, a valid license or certificate as a psychologist from another state;

(6) possesses a doctoral degree from a recognized institution of higher learning;

(7) has successfully completed:

(A) a degree program that would have been approved by the board at the time the individual was licensed or certified in the other state; or

(B) if the individual was licensed or certified in the other state before July 1, 1969, a degree program that satisfied the educational requirements of the board in effect January 4, 1971;

(8) has practiced psychology continuously since being licensed or certified;

(9) if the individual was licensed or certified by the other state:

(A) after September 30, 1972, has taken the Examination for the Professional Practice of Psychology and achieved the passing score required by the board at the time the examination was administered; or

(B) before January 1, 1990, and the other state required an examination other than the Examination for the Professional Practice of Psychology, and the individual achieved a passing score in the other state at the time of licensure or certification;

(10) has passed an examination administered by the board that covers Indiana law related to the practice of psychology; and

(11) is not in violation of this chapter or rules adopted under this chapter.

(b) The board may adopt rules under IC 4-22-2 concerning the issuance of a license under this section.

SECTION 63. IC 25-35.6-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) As used in this article, "board" means the speech-language pathology and audiology board established by this article.

(b) As used in this article, "person" means any individual, organization, or corporate body, except that only an individual may be licensed under this article.

(c) As used in this article, "speech-language pathologist" means an individual who practices speech-language pathology and who presents himself to the public by any title or description of services incorporating the words speech pathologist, speech-language pathologist, speech therapist, **speech-language specialist, teacher of communication disorders**, speech correctionist, speech clinician, language pathologist, language therapist, logopedist, communicologist, voice therapist, voice pathologist, or any similar title or description of service.

(d) As used in this article, "speech-language pathology" means the application of nonmedical and nonsurgical principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, instruction, habilitation, or rehabilitation related to the development and disorders of speech, voice, or language for the purpose of evaluating, preventing, ameliorating, or modifying such disorders and conditions in individuals or groups of individuals. **following:**

(1) The prevention, evaluation, habilitation, rehabilitation, instruction, and research of communication and swallowing disorders.

(2) The elective modification of communication behaviors.

(3) The enhancement of communication, including the use of augmentative or alternate communication strategies.

(e) As used in this article, "audiologist" means an individual who practices audiology and who presents himself to the public by any

title or description of services incorporating the words audiologist, hearing clinician, hearing therapist, **hearing specialist, audiometrist, vestibular specialist**, or any similar title or description of service.

(f) As used in this article, "audiology" means the application of nonmedical and nonsurgical principles, methods, and procedures of measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, or rehabilitation related to hearing and disorders of hearing for the purpose of evaluating, identifying, preventing, ameliorating, or modifying such disorders and conditions in individuals or groups of individuals: **prevention, evaluation, habilitation, rehabilitation, instruction, and research of disorders of hearing, auditory function, and vestibular function.**

(g) As used in this article, "speech-language pathology aide" **"support personnel"** means ~~an individual~~ **individuals** who ~~meets~~ **minimum** meet the qualifications which the board ~~may~~ **shall** establish for the following:

- (1) ~~Speech-language pathology aides: aide.~~
- (2) ~~Speech-language pathology associate.~~
- (3) ~~Speech-language pathology assistant.~~

~~which qualifications shall be less than those established by this article as necessary for licensure as a speech-language pathologist; and who works under the direct supervision of a licensed speech pathologist.~~

(h) As used in this article, "audiology ~~aide~~ **assistant**" means an individual who:

- (1) **is not licensed as an audiologist under this article;**
- (2) ~~meets minimum~~ **meets** qualifications which the board may establish; ~~for audiology aides, which qualifications shall be less than those established by this article as necessary for licensure as an audiologist; and who works and~~
- (3) **provides specific services** under the ~~direct direction and~~ supervision of a licensed audiologist.

(i) **As used in this article, "clinical fellowship" means a supervised professional experience.**

(j) **As used in this article, "direct supervision" means onsite observation and guidance while an assigned evaluation or therapeutic activity is being performed.**

SECTION 64. IC 25-35.6-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. Nothing in this article shall be construed as preventing or restricting the following:

- (1) A physician or surgeon from engaging in the practice of medicine in this state, or a person under the supervision and control of a physician or surgeon from conducting hearing testing, provided such a person is not called an audiologist.
- (2) Any hearing aid dealer from:
  - (A) engaging in the testing of hearing and other practices and procedures necessary for the business for which the dealer is registered in this state under IC 25-20-1; **and**
  - (B) **using the title hearing aid specialist or any similar title or description of service.**
- (3) Any person licensed or registered in this state by any other law from engaging in the profession or occupation for which the person is licensed or registered.
- (4) A person ~~who holds a valid and current credential as a speech-language or hearing specialist issued by the department of education; or a person employed as a speech-language pathologist or audiologist by the government of the United States, if such person performs speech-language pathology or audiology services solely within the confines or under the jurisdiction of the governmental or state educational organization by which the person is employed. However, such person may, without obtaining a license under this article, consult with or disseminate the person's research findings and other scientific information to speech-language pathologists and audiologists outside the jurisdiction of the organization by which the person is employed. Such person may also offer instruction and lectures to the public for a fee; monetary or other;~~ without being licensed under this article. Such person may additionally elect to be subject to this article.
- (5) The activities and services of persons pursuing a course of study leading to a degree in speech-language pathology **or audiology** at a college or university, if:

- (A) such activities and services constitute a part of a supervised course of study; ~~and that~~

(B) such person is designated speech-language pathology **or audiology** intern, speech-language pathology **or audiology** trainee, or by other such titles clearly indicating the training status appropriate to the person's level of training; **and**

(C) **the person works only under the supervision of a speech-language pathologist or audiologist licensed under this article.**

(6) ~~The activities and services of a person pursuing a course of study leading to a degree in audiology at a college or university, if such activities and services constitute a part of a supervised course of study and such person is designated audiology intern, audiology trainee, or by any other such titles clearly indicating the training status appropriate to the person's level of training.~~

(7) ~~The activities and services of persons fulfilling the clinical experience requirement of section 5(a)(5) 5(2)(B)(ii) or 6(3)(B) of this chapter, if such activities and services constitute a part of the experience required for that section's fulfillment.~~

(8) ~~The performance of pure tone air conduction testing by an industrial audiometric technician, as defined by federal law, who is working in an industrial hearing conservation program directed by a physician or an audiologist.~~

(9) ~~The performance of speech-language pathology or audiology services in this state by any person not a resident of this state who is not licensed under this article, if such services are performed for no more than five (5) days in any calendar year and in cooperation with a speech-language pathologist or audiologist licensed under this article, and if such person meets the qualifications and requirements for application for licensure described in sections 5(a)(1) and 5(a)(2) sections 5(1) and 5(2) or 6(1) and 6(2) of this chapter. However, a person not a resident of this state who is not licensed under this article, but who is licensed under the law of another state which has established licensure requirements at least equivalent to those established by section 5 or 6 of this chapter or who is the holder of a certificate of clinical competence in speech-language pathology or audiology or its equivalent issued by a nationally recognized association for speech-language and or hearing, may offer speech-language pathology or audiology services in this state for no more than thirty (30) days in any calendar year, if such services are performed in cooperation with a speech-language pathologist or audiologist licensed under this article.~~

SECTION 65. IC 25-35.6-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. To be eligible for licensure by the board as a speech-language pathologist ~~or audiologist; registration as a speech-language pathology aide, a speech-language pathology associate, or a speech-language pathology assistant,~~ a person must satisfy the following:

- (1) Not have been convicted of a crime that has a direct bearing on the person's ability to practice competently.
- (2) **For licensure as a speech-language pathologist:**
  - (A) possess at least a master's degree or its equivalent in the area of speech-language pathology ~~or audiology; as the case may be;~~ from an educational institution recognized by the board; **and**
  - (B) **submit evidence of:**
    - (i) **a national certification in speech-language pathology that is approved by the board; or**
    - (ii) **satisfaction of the academic and clinical experience requirements necessary for licensure as defined in the rules of the board.**
- (3) **For registration as a speech-language pathology aide, possess at least a high school degree or its equivalent.**
- (4) **For registration as a speech-language pathology associate, possess at least an associate degree in speech-language pathology.**
- (5) **For registration as a speech-language pathology assistant, possess at least a bachelor's degree in speech-language pathology.**
- (6) ~~Submit to the board transcripts from one (1) or more of the educational institutions described in subdivision (2) evidencing completion of at least eighteen (18) semester hours in courses providing fundamental information applicable to the normal~~

development of speech, hearing, and language and at least forty-two (42) semester hours in courses providing information about and practical experience in the management of speech, hearing, and language disorders, and of these forty-two (42) semester hours:

- (A) no fewer than six (6) shall be in audiology for a person applying for licensure in speech-language pathology;
  - (B) no fewer than six (6) shall be in speech-language pathology for a person applying for licensure in audiology;
  - (C) no more than six (6) shall be in courses providing academic credit for clinical practice;
  - (D) at least twenty-four (24), not including credits for thesis or dissertation requirements, shall be in the field for which the license is sought; and
  - (E) at least thirty (30) shall be in courses considered by the educational institution in which they are conducted as acceptable for application toward a graduate degree.
- (4) Submit to the board evidence of the completion of at least three hundred (300) hours of supervised, direct clinical experience with a variety of communication disorders, which experience is received within the educational institution itself or a clinical program with which it cooperates.
- (5) Submit to the board evidence of the completion of at least nine (9) consecutive months, at no less than thirty (30) hours per week, of clinical experience in the professional area (speech-language pathology and audiology) for which a license is sought. This requirement may also be fulfilled by part-time clinical experience as follows: fifteen (15) to nineteen (19) hours per week for eighteen (18) consecutive months; twenty (20) to twenty-four (24) hours per week for fifteen (15) consecutive months; or twenty-five (25) to twenty-nine (29) hours per week for twelve (12) consecutive months. The clinical experience must be under the direct supervision of and attested to in a notarized statement by a person licensed in the area (speech-language pathology or audiology) for which a license is being sought. Such clinical experience must additionally follow the completion of the requirements described in subdivisions (2), (3), and (4).
- (6) Pass a written examination approved by the board.

SECTION 66. IC 25-35.6-1-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. To be eligible for an initial license by the board as an audiologist, an individual must satisfy the following:

- (1) Not have been convicted of a crime that has a direct bearing on the individual's ability to practice competently.
- (2) Possess a doctoral degree from an accredited educational program recognized by the board.
- (3) Submit evidence of:
  - (A) a national certification in audiology that is approved by the board; or
  - (B) satisfaction of the academic and clinical experience requirements necessary for licensure as defined in the rules of the board.

SECTION 67. IC 25-35.6-1-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) The professional standards board may issue an initial license as a speech-language pathologist only to an individual who is licensed as a speech-language pathologist under this article. The professional standards board shall issue a license as a speech-language pathologist to an individual who:

- (1) is licensed as a speech-language pathologist under this article; and
- (2) requests licensure.

(b) A speech-language pathologist licensed by the professional standards board shall register with the health professions bureau all speech-language pathology support personnel that the speech-language pathologist supervises.

(c) The professional standards board may not impose different or additional supervision requirements upon speech-language pathology support personnel than the supervision requirements that are imposed under this article.

(d) The professional standards board may not impose continuing education requirements upon an individual who receives a license under this section that are different from or in addition to the continuing education requirements imposed under this article.

(e) An individual who:

(1) if:

- (A) the individual is a speech-language pathologist, receives a license under this section or received a license as a speech-language pathologist issued by the professional standards board before July 1, 2005; or
- (B) the individual is an audiologist, works in an educational setting;

(2) has been the holder of a certificate of clinical competence in speech-language pathology or audiology or its equivalent issued by a nationally recognized association for speech-language pathology and audiology for at least three (3) consecutive years; and

(3) has professional experience as a licensed speech-language pathologist or audiologist in a school setting that is equivalent to the experience required for a teacher seeking national certification by the National Board of Professional Teaching Standards;

is considered to have the equivalent of and is entitled to the same benefits that accrue to a holder of a national certification issued by the National Board for Professional Teaching Standards.

SECTION 68. IC 25-35.6-1-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) The board shall adopt rules under IC 4-22-2 to define the role of support personnel, including the following:

- (1) Supervisory responsibilities of the speech-language pathologist.
- (2) Ratio of support personnel to speech-language pathologists.
- (3) Scope of duties and restrictions of responsibilities for each type of support personnel.
- (4) Frequency, duration, and documentation of supervision.
- (5) Education and training required to perform services.
- (6) Procedures for renewing registration and terminating duties.

(b) A speech-language pathologist must meet the following qualifications to supervise speech-language pathology support personnel:

- (1) Hold a current license as a speech-language pathologist.
- (2) Have at least three (3) years of clinical experience.
- (3) Hold a certificate of clinical competence in speech-language pathology or its equivalent issued by a nationally recognized association for speech-language and hearing.

(c) Speech-language pathology support personnel may provide support services only under the supervision of a speech-language pathologist.

SECTION 69. IC 25-35.6-1-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) If a speech-language pathologist performs an evaluation and the evaluation suggests the possibility of a condition that requires medical attention, the speech-language pathologist shall promptly refer the patient to an individual licensed under IC 25-22.5.

(b) A speech-language pathologist shall perform instrumental procedures using rigid or flexible endoscopes only under the authorization and general supervision of an individual licensed under IC 25-22.5.

SECTION 70. IC 25-35.6-1-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) If an audiologist performs an evaluation and the evaluation suggests the possibility of a condition that requires medical attention, the audiologist shall promptly refer the patient to an individual licensed under IC 25-22.5.

(b) An audiologist shall administer tests of vestibular function only to patients who have been referred by an individual licensed under IC 25-22.5.



SECTION 71. IC 25-35.6-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The board:

- (1) shall administer, coordinate, and enforce this article;
- (2) shall evaluate the qualifications and supervise the examinations of applicants for licensure under this article;
- (3) may issue subpoenas, examine witnesses, and administer oaths; and
- (4) shall, at its discretion, investigate allegations of practices violating this article, subject to IC 25-1-7.

(b) The board shall adopt rules under IC 4-22-2 relating to professional conduct commensurate with the policy of this article, including rules that establish standards for the competent practice of speech-language pathology and audiology. Following their adoption, the rules govern and control the professional conduct of every person who holds a license to practice speech-language pathology or audiology in this state.

(c) The board shall conduct the hearings and keep the records and minutes necessary for the orderly dispatch of its functions. The board shall have notice provided to the appropriate persons in a manner it considers appropriate of the times and places of all hearings authorized by this subsection. Approval by a majority of a quorum of the board is required for any action to be taken in actions for revocation or suspension of a license issued under this article.

(d) The board may adopt rules under IC 4-22-2 to:

- (1) administer or enforce this article;
- (2) register persons in the process of fulfilling the clinical experience required for a license under this article;
- (3) establish fees in accordance with IC 25-1-8-2; and
- (4) register speech-language pathology **assistants, associates, and audiology aides** and establish rules governing the duties of **assistants, associates, and aides**.

(e) The conferral or enumeration of specific powers elsewhere in this article shall not be construed as a limitation of the general functions conferred by this section.

SECTION 72. IC 25-35.6-3-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The board ~~may waive the examination and grant licensure shall issue a license in speech-language pathology or audiology to any applicant who:~~

(1) presents proof of:

- (A) current licensure in **speech-language pathology or audiology** in another state, including the District of Columbia or a territory of the United States, ~~which maintains under professional standards considered by that~~ the board **considers to be at least equivalent** to those set forth in this article **at the time that the license was issued in the other state or territory; or**
- (B) **practice as a speech-language pathologist or an audiologist under the authority and supervision of an agency of the federal government; and**

(2) **meets any other requirements that the board establishes by rule.**

(b) The board may waive the examination and grant licensure to any person certified as clinically competent by a nationally recognized association for speech-language and hearing in the area for which such person is applying for licensure.

SECTION 73. IC 25-35.6-3-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.5. **The board may issue a provisional license in audiology to an individual who meets the requirements that the board establishes by rule.**

SECTION 74. IC 25-35.6-3-8.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8.1. **(a) Each individual licensed under this article and each individual registered as a speech-language pathology aide, a speech-language pathology associate, or a speech-language pathology assistant shall make the license or registration, or an official duplicate of the license or registration, available when the individual practices speech-language pathology or audiology or provides support services.**

**(b) Before support personnel may provide services, the speech-language pathologist shall ensure that prior written notification is provided to the recipient of the services that**

**services are to be provided in whole or in part by support personnel.**

SECTION 75. IC 34-24-1-1, AS AMENDED BY SEA 47-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

- (i) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).
- (ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (v) Dealing in a counterfeit substance (IC 35-48-4-5).
- (vi) Possession of cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-6).
- (vii) Dealing in paraphernalia (IC 35-48-4-8.5).
- (viii) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

(D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass destruction (as defined in IC 35-41-1-29.4) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-41-1-26.5).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

- (A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;
- (B) used to facilitate any violation of a criminal statute; or
- (C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

- (A) commit, attempt to commit, or conspire to commit;
- (B) facilitate the commission of; or
- (C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

- (A) Dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1).
- (B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud

under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment used or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47-5.

(12) Cigarettes that are sold in violation of IC 24-3-5.2, cigarettes that a person attempts to sell in violation of IC 24-3-5.2, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.2.

(13) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

(14) Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.

**(15) After December 31, 2005, if a person is convicted of an offense specified in IC 25-26-14-26(b) or IC 35-43-10, the following real or personal property:**

**(A) Property used or intended to be used to commit, facilitate, or promote the commission of the offense.**

**(B) Property constituting, derived from, or traceable to the gross proceeds that the person obtained directly or indirectly as a result of the offense.**

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to seizure under subsection (a).

(c) Equipment under subsection (a)(10) may not be seized unless it can be proven by a preponderance of the evidence that the owner of the equipment knowingly permitted the equipment to be used to engage in conduct that subjects it to seizure under subsection (a)(10).

(d) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in or manufacturing cocaine, a narcotic drug, or methamphetamine).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(5) IC 35-48-4-6 (possession of cocaine, a narcotic drug, or methamphetamine) as a Class A felony, Class B felony, or Class C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 76. IC 35-43-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]:

#### **Chapter 10. Legend Drug Deception**

**Sec. 1. The definitions in IC 25-26-14 apply throughout this chapter.**

**Sec. 2. Except as provided by federal law or regulation, this chapter does not apply to a pharmaceutical manufacturer that is**

**approved by the federal Food and Drug Administration.**

**Sec. 3. A person who knowingly or intentionally:**

(1) possesses a contraband legend drug;

(2) sells, delivers, or possesses with intent to sell or deliver a contraband legend drug;

(3) forges, counterfeits, or falsely creates a label for a legend drug or falsely represents a factual matter contained on a label of a legend drug; or

(4) manufactures, purchases, sells, delivers, brings into Indiana, or possesses a contraband legend drug;

**commits legend drug deception, a Class D felony.**

**Sec. 4. A person:**

(1) who knowingly or intentionally manufactures, purchases, sells, delivers, brings into Indiana, or possesses a contraband legend drug; and

(2) whose act under subdivision (1) results in the death of an individual;

**commits legend drug deception resulting in death, a Class A felony.**

SECTION 77. IC 16-27-1-0.5 IS REPEALED [EFFECTIVE JULY 1, 2005].

SECTION 78. [EFFECTIVE JULY 1, 2005] (a) The definitions in IC 16-27-4, as added by this act, apply to this SECTION.

(b) Notwithstanding IC 16-27-4, as added by this act, a person is not required to be licensed by the state department of health to operate a personal services agency before January 1, 2006.

(c) This SECTION expires January 1, 2006.

SECTION 79. [EFFECTIVE JULY 1, 2005] (a) IC 25-26-14, as amended by this act, applies:

(1) after December 31, 2005, for an initial license issued under IC 25-26-14, as amended by this act; and

(2) on the first expiration date occurring after December 31, 2005, for renewal of a license issued under IC 25-26-14, before amendment by this act.

(b) The Indiana board of pharmacy established by IC 25-26-13-3 may establish an electronic pedigree pilot program to authenticate, track, and trace legend drugs. The pilot program must include participation of drug manufacturers, wholesale drug distributors, and pharmacies that are licensed in Indiana. The board may establish the requirements and guidelines for the pilot program.

(c) Before June 30, 2007, the Indiana board of pharmacy established by IC 25-26-13-3 shall conduct a study of the electronic pedigree pilot program. The study must include consultation with manufacturers, distributors, and pharmacies that participate in the electronic pedigree pilot program. The study may include consultation with manufacturers, distributors, and pharmacies that do not participate in the electronic pedigree pilot program. Based on the results of the study, the board shall determine a date to implement a mandatory electronic pedigree program. However, the board may not implement a mandatory electronic pedigree program until after:

(1) the board has completed the study under this subsection; and

(2) the board has consulted with the federal Food and Drug Administration concerning the implementation of a mandatory electronic pedigree program.

(d) The Indiana board of pharmacy established by IC 25-26-13-3 shall adopt rules under IC 25-26-14-8.5(7), as added by this act, prescribing the route that a legend drug travels that is in the normal distribution chain of custody.

(e) IC 25-26-14-26(b), as added by this act, applies only to offenses committed after December 31, 2005.

(f) This SECTION expires December 31, 2007.

SECTION 80. [EFFECTIVE JULY 1, 2005] (a) Notwithstanding IC 25-35.6, as amended by this act, concerning issuance of a license, the health professions bureau shall issue a license in speech-language pathology as follows:

(1) To each individual who applies for licensure and meets all the following qualifications:

(A) Holds a license in speech and hearing therapy issued by the professional standards board.

(B) Has a master's degree in speech-language pathology or a related discipline.

- (C) Has been employed as a speech-language pathologist for at least nine (9) months in the last five (5) years.
- (2) To each individual who applies for licensure and meets all the following qualifications:
- (A) Holds a life license in speech-language pathology issued by the professional standards board.
- (B) Has:
- (i) been employed as a speech-language pathologist for at least nine (9) months in the last five (5) years; or
- (ii) taken at least thirty-six (36) hours of continuing education approved by the professional standards board or health professions bureau after December 31, 2001, and before January 1, 2007.

(b) This SECTION expires July 1, 2007.

SECTION 81. [EFFECTIVE JULY 1, 2005] (a) Notwithstanding IC 25-35.6-1-8(b)(3), as added by this act, a speech-language pathologist is not required to hold a certificate of clinical competence in speech-language pathology or its equivalent issued by a nationally recognized association for speech-language and hearing to supervise speech-language pathology support personnel.

(b) This SECTION expires July 1, 2010.

SECTION 82. [EFFECTIVE JULY 1, 2005] (a) Notwithstanding IC 25-35.6-1-6(2), as added by this act, an applicant for an initial license as an audiologist is required to possess only a master's degree in audiology from an accredited educational program recognized by the speech-language pathology and audiology board.

(b) This SECTION expires January 1, 2007.

(Reference is to EHB 1098 as reprinted April 6, 2005.)

MESSER	DILLON
C. BROWN	SIMPSON
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

CONFERENCE COMMITTEE REPORT  
ESB 282-1; filed April 26, 2005, at 6:20 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 282 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 7.1-3-20-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) A permit that is authorized by this section may be issued without regard to the quota provisions of IC 7.1-3-22.

(b) The commission may issue a three-way permit to sell alcoholic beverages for on-premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant facility in the passenger terminal complex of a publicly owned airport which is served by a scheduled commercial passenger airline certified to enplane and deplane passengers on a scheduled basis by a federal aviation agency. A permit issued under this subsection shall not be transferred to a location off the airport premises.

(c) The commission may issue a three-way, two-way, or one-way permit to sell alcoholic beverages for on-premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant within a redevelopment project consisting of a building or group of buildings that:

- (1) was formerly used as part of a union railway station;
- (2) has been listed in or is within a district that has been listed in the federal National Register of Historic Places maintained pursuant to the National Historic Preservation Act of 1966, as amended; and
- (3) has been redeveloped or renovated, with the redevelopment or renovation being funded in part with grants from the federal, state, or local government.

A permit issued under this subsection shall not be transferred to a

location outside of the redevelopment project.

(d) The commission may issue a three-way, two-way, or one-way permit to sell alcoholic beverages for on-premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant:

- (1) on land; or
- (2) in a historic river vessel;

within a municipal riverfront development project funded in part with state and city money. A permit issued under this subsection may not be transferred.

(e) The commission may issue a three-way, two-way, or one-way permit to sell alcoholic beverages for on-premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant within a renovation project consisting of a building that:

- (1) was formerly used as part of a passenger and freight railway station; and
- (2) was built before 1900.

The permit authorized by this subsection may be issued without regard to the proximity provisions of IC 7.1-3-21-11.

(f) The commission may issue a three-way permit for the sale of alcoholic beverages for on-premises consumption at a cultural center for the visual and performing arts to a town that:

- (1) is located in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); and
- (2) has a population of more than twenty thousand (20,000) but less than twenty-three thousand (23,000).

(g) After June 30, 2005, the commission may issue not more than ten (10) new three-way, two-way, or one-way permits to sell alcoholic beverages for on-premises consumption to applicants, each of whom must be the proprietor, as owner or lessee, or both, of a restaurant located within a district, or not more than five hundred (500) feet from a district, that meets the following requirements:

- (1) The district has been listed in the National Register of Historic Places maintained under the National Historic Preservation Act of 1966, as amended.
- (2) A county courthouse is located within the district.
- (3) A historic opera house listed on the National Register of Historic Places is located within the district.
- (4) A historic jail and sheriff's house listed on the National Register of Historic Places is located within the district.

The legislative body of the municipality in which the district is located shall recommend to the commission sites that are eligible to be permit premises. The commission shall consider, but is not required to follow, the municipal legislative body's recommendation in issuing a permit under this subsection. An applicant is not eligible for a permit if, less than two (2) years before the date of the application, the applicant sold a retailer's permit that was subject to IC 7.1-3-22 and that was for premises located within the district described in this section or within five hundred (500) feet of the district. A permit issued under this subsection shall not be transferred.

SECTION 2. IC 7.1-3-20-16.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16.1. (a) This section applies to a municipal riverfront development project authorized under section 16(d) of this chapter.

(b) In order to qualify for a permit, an applicant must demonstrate that the municipal riverfront development project area where the permit is to be located meets the following criteria:

- (1) The project boundaries must border on at least one (1) side of a river.
- (2) The proposed permit premises may not be located more than:

- (A) one thousand five hundred (1,500) feet; or
- (B) three (3) city blocks;

from the river, whichever is greater. However, if the area adjacent to the river is incapable of being developed because the area is in a floodplain, or for any other reason that prevents the area from being developed, the distances described in clauses (A) and (B) are measured from the city blocks located nearest to the river that are capable of being developed.

(3) The permit premises are located within:

(A) an economic development area, a blighted area, an urban renewal area, or a redevelopment area established under IC 36-7-14, IC 36-7-14.5, or IC 36-7-15.1; or

(B) an economic development project district under IC 36-7-15.2 or IC 36-7-26; or

(C) a community revitalization enhancement district designated under IC 36-7-13-12.1.

(4) The project must be funded in part with state and city money.

(5) The boundaries of the municipal riverfront development project must be designated by ordinance or resolution by the legislative body (as defined in IC 36-1-2-9(3) or IC 36-1-2-9(4)) of the city in which the project is located.

(c) Proof of compliance with subsection (b) must consist of the following documentation, which is required at the time the permit application is filed with the commission:

(1) A detailed map showing:

(A) definite boundaries of the entire municipal riverfront development project; and

(B) the location of the proposed permit within the project.

(2) A copy of the local ordinance or resolution of the local governing body authorizing the municipal riverfront development project.

(3) Detailed information concerning the expenditures of state and city funds on the municipal riverfront development project.

(d) Notwithstanding subsection (b), the commission may issue a permit for premises, the location of which does not meet the criteria of subsection (b)(2), if all the following requirements are met:

(1) All other requirements of this section and section 16(d) of this chapter are satisfied.

(2) The proposed premises is located not more than:

(A) three thousand (3,000) feet; or

(B) six (6) blocks;

from the river, whichever is greater. However, if the area adjacent to the river is incapable of being developed because the area is in a floodplain, or for any other reason that prevents the area from being developed, the distances described in clauses (A) and (B) are measured from the city blocks located nearest to the river that are capable of being developed.

(3) The permit applicant satisfies the criteria established by the commission by rule adopted under IC 4-22-2. The criteria established by the commission may require that the proposed premises be located in an area or district set forth in subsection (b)(3).

(4) The permit premises may not be located less than two hundred (200) feet from facilities owned by a state educational institution (as defined in IC 20-12-0.5-1).

(e) A permit may not be issued if the proposed permit premises is the location of an existing three-way permit subject to IC 7.1-3-22-3.

### SECTION 3. An emergency is declared for this act.

(Reference is to ESB 282 as reprinted April 8, 2005.)

LONG	BORROR
BRODEN	KUZMAN
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

### CONFERENCE COMMITTEE REPORT ESB 322-1; filed April 26, 2005, at 6:46 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill 322 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 36-1-17 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

### Chapter 17. Defense Expenses for Unit and Municipal Corporation Officers and Employees

Sec. 1. As used in this chapter, "criminal action" means a prosecution against an individual alleging the commission of a felony or misdemeanor.

Sec. 2. Except as provided in section 3 of this chapter, a unit or municipal corporation may not pay the legal expenses incurred by an officer or employee of the unit or the municipal corporation:

(1) in defending against:

(A) a criminal action;

(B) a civil action brought by the attorney general of the United States, a United States attorney, the attorney general of Indiana, or an Indiana prosecuting attorney under:

(i) IC 34-24-1;

(ii) IC 34-24-2;

(iii) IC 34-24-3;

(iv) IC 5-11-5;

(v) IC 5-11-6;

(vi) IC 5-13-6;

(vii) IC 5-13-14-3; or

(viii) 18 U.S.C. 1964; or

(C) a proceeding to enforce an ordinance or a statute defining an infraction; or

(2) who is the target of a grand jury investigation, if the scope of the investigation includes a claim that the officer or employee committed a criminal act.

Sec. 3. (a) An officer or employee of a unit or municipal corporation who is charged with:

(1) a crime; or

(2) an infraction;

relating to an act that was within the scope of the official duties of the officer or employee may apply to the fiscal body of the unit or municipal corporation for reimbursement of reasonable and customarily charged expenses incurred in the officer's or employee's defense against those charges, if all charges have been dismissed or the officer or employee has been found not guilty of all charges. The fiscal body of the unit or municipal corporation shall reimburse the officer or employee for reasonable and customarily charged expenses, as determined by the fiscal body of the unit or municipal corporation, incurred in the officer's or employee's defense against those charges, if all charges have been dismissed or the officer or employee has been found not guilty of all charges.

(b) An officer or employee of a unit or municipal corporation who is the target of a grand jury investigation may apply to the fiscal body of the unit or municipal corporation for reimbursement of reasonable and customarily charged expenses incurred by the officer or employee resulting from the grand jury investigation, if the grand jury fails to indict the officer or employee and the acts investigated by the grand jury were within the scope of the official duties of the officer or employee. The fiscal body of the unit or municipal corporation shall reimburse the officer or employee for reasonable and customarily charged expenses, as determined by the fiscal body of the unit or municipal corporation, incurred by the officer or employee as a result of the grand jury investigation, if the grand jury fails to indict the officer or employee.

(c) An officer or employee of a unit or municipal corporation who is the defendant in a civil action described in section 2(1)(B)(i) through section 2(1)(B)(viii) of this chapter and brought by a person described in section 2(1)(B) of this chapter that involves an action within the scope of the official duties of the officer or employee may apply to the fiscal body of the unit or municipal corporation for reimbursement of reasonable and customarily charged expenses incurred in the officer's or employee's defense in the civil action. The fiscal body of the unit or municipal corporation shall reimburse the officer or employee for reasonable and customarily charged expenses incurred in the officer's or employee's defense against the civil action if:

(1) all claims that formed the basis of the civil action have been dismissed; or

(2) a judgment is rendered in favor of the officer or employee on all counts in the civil action.

Sec. 4. The fiscal body of a unit or municipal corporation may:

- (1) act on an application under section 3 of this chapter without a hearing; and  
 (2) require an officer or employee seeking reimbursement under this chapter to:  
 (A) answer questions under oath; or  
 (B) provide information or documents concerning the case or investigation for which the officer or employee is seeking reimbursement.

**SECTION 2. An emergency is declared for this act.**

(Reference is to ESB 322 as printed March 29, 2005.)

BRAY	FOLEY
MRVAN	BARDON
Senate Conferees	House Conferees

The conference committee report was filed and read a first time.

## RESOLUTIONS ON FIRST READING

### House Resolution 84

Representative Koch introduced House Resolution 84:

A HOUSE RESOLUTION urging the establishment of an interim study committee to study the fiscal impact of large areas of public land upon local units of government.

*Whereas, For many years, counties hosting large areas of public land have expressed concern about the impact these lands have on local government; and*

*Whereas, There is a need for further study to determine the impact made by large areas of public land upon local units of government and what can be done to lessen the impact affecting these local government units: Therefore,*

*Be it resolved by the House of Representatives of the General Assembly of the State of Indiana:*

SECTION 1. That the legislative council is urged to establish a committee to study the fiscal impact of large areas of public land upon local units of government.

SECTION 2. That the committee, if established, shall operate under the direction of the legislative council and that the committee shall issue a final report when directed to do so by the council.

The resolution was read a first time and referred to the Committee on Rules and Legislative Procedures.

### House Resolution 85

Representative Koch introduced House Resolution 85:

A HOUSE RESOLUTION urging the establishment of an interim study committee to study the impact of state and federal mandates on Indiana public schools.

*Whereas, In these difficult financial times when Indiana's public schools are being forced to take reductions in their budgets, it is necessary to study and analyze the impact of state and federal mandates upon our schools: Therefore,*

*Be it resolved by the House of Representatives of the General Assembly of the State of Indiana:*

SECTION 1. That the legislative council is urged to establish a committee to study the impact of state and federal mandates on Indiana public schools.

SECTION 2. That the committee, if established, shall operate under the direction of the legislative council and shall issue a final report when directed to do so by the council.

The resolution was read a first time and referred to the Committee on Rules and Legislative Procedures.

## ACTION ON RULES SUSPENSIONS AND CONFERENCE COMMITTEE REPORTS

### Engrossed House Bill 1159-1

#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and

recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 23 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed House Bill 1159-1.

WHETSTONE, Chair

Report adopted.

#### HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 23 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed House Bill 1159-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 569: yeas 91, nays 0. Report adopted.

### Engrossed House Bill 1200-1

#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 21 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed House Bill 1200-1.

WHETSTONE, Chair

Report adopted.

#### HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 21 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed House Bill 1200-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 570: yeas 92, nays 0. Report adopted.

### Engrossed House Bill 1431-1

#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 3 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed House Bill 1431-1.

WHETSTONE, Chair

Report adopted.

#### HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following

conference committee report may be laid over on the members' desks for 3 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed House Bill 1431-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 571: yeas 93, nays 0. Report adopted.

### **Engrossed Senate Bill 49-1**

#### **COMMITTEE REPORT**

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 5 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 49-1.

WHETSTONE, Chair

Report adopted.

#### **HOUSE MOTION**

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 5 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 49-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 572: yeas 94, nays 0. Report adopted.

### **Engrossed Senate Bill 202-1**

#### **COMMITTEE REPORT**

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 5 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 202-1.

WHETSTONE, Chair

Report adopted.

#### **HOUSE MOTION**

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 5 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 202-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 573: yeas 91, nays 2. Report adopted.

### **Engrossed Senate Bill 279-1**

#### **COMMITTEE REPORT**

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and

recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 3 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 279-1.

WHETSTONE, Chair

Report adopted.

#### **HOUSE MOTION**

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 3 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 279-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 574: yeas 94, nays 0. Report adopted.

### **Engrossed Senate Bill 298-1**

#### **COMMITTEE REPORT**

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 2 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 298-1.

WHETSTONE, Chair

Report adopted.

#### **HOUSE MOTION**

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 2 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 298-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 575: yeas 92, nays 1. Report adopted.

### **Engrossed Senate Bill 341-1**

#### **COMMITTEE REPORT**

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 5 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 341-1.

WHETSTONE, Chair

Report adopted.

#### **HOUSE MOTION**

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following

conference committee report may be laid over on the members' desks for 5 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 341-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 576: yeas 94, nays 0. Report adopted.

### Engrossed Senate Bill 446-1

#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 5 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 446-1.

WHETSTONE, Chair

Report adopted.

#### HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11 and that Rule 164.1 be suspended so that the following conference committee report may be laid over on the members' desks for 5 hours, all so that the following conference committee report may be eligible to be placed before the House for action: Engrossed Senate Bill 446-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 577: yeas 92, nays 0. Report adopted.

### Engrossed Senate Bill 509-1

#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Rules and Legislative Procedures has had under consideration House Rule 162.1 and recommends that Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 509-1.

WHETSTONE, Chair

Report adopted.

#### HOUSE MOTION

Mr. Speaker: I move House Rule 162.1 be suspended so that the following conference committee report is eligible for consideration after April 11: Engrossed Senate Bill 509-1.

WHETSTONE, Chair

Motion prevailed.

The conference committee report was reread. Roll Call 578: yeas 93, nays 0. Report adopted.

## CONFERENCE COMMITTEE REPORTS

### CONFERENCE COMMITTEE REPORT

EHB 1314-1; filed April 26, 2005, at 7:26 p.m.

Mr. Speaker: Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill 1314 respectfully reports that said two committee have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the

following:

SECTION 1. IC 4-10-15-2, AS AMENDED BY HEA 1288-2005, SECTION 57, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. The warrants may be drawn for the necessary and current expenses of the following:

- (1) All psychiatric hospitals (as defined in IC 12-7-2-184).
- (2) The Indiana School for the Deaf, established by IC 20-22-2-1.
- (3) The Indiana School for the Blind **and Visually Impaired**, established by IC 20-21-2-1.
- (4) The Indiana Veterans' Home.
- (5) The Plainfield Juvenile Correctional Facility.

SECTION 2. IC 4-15-2-3.8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.8. "State service" means public service by:

- (1) employees and officers, including the incumbent directors, of the county offices of family and children; and
- (2) employees and officers, except members of boards and commissions or individuals hired for or appointed to, after June 30, 1982, positions as appointing authorities, deputies, assistants reporting to appointing authorities, or supervisors of major units within state agencies, irrespective of the title carried by those positions, of the division of disability, aging, and rehabilitative services, Fort Wayne State Developmental Center, Muscatatuck State Developmental Center, division of mental health and addiction, Larue D. Carter Memorial Hospital, Evansville State Psychiatric Treatment Center for Children, ~~Central State Hospital~~, Evansville State Hospital, Logansport State Hospital, Madison State Hospital, Richmond State Hospital, state department of health, Indiana School for the Blind **and Visually Impaired**, Indiana School for the Deaf, Indiana Veterans' Home, Indiana Soldiers' and Sailors' Children's Home, Silvercrest Children's Development Center, department of correction, Westville Correctional Facility, Plainfield Juvenile Correctional Facility, Putnamville Correctional Facility, Indianapolis Juvenile Correctional Facility, Indiana State Prison, Indiana Women's Prison, Pendleton Correctional Facility, Reception and Diagnostic Center, Rockville Correctional Facility, Youth Rehabilitation Facility, Plainfield Correctional Facility, department of fire and building services, state emergency management agency (excluding a county emergency management organization and any other local emergency management organization created under IC 10-14-3), civil rights commission, criminal justice planning agency, department of workforce development, Indiana historical bureau, Indiana state library, division of family and children, Indiana state board of animal health, Federal Surplus Property Warehouse, Indiana education employment relations board, department of labor, Indiana protection and advocacy services commission, commission on public records, Indiana horse racing commission, and state personnel department.

SECTION 3. IC 5-22-4-8, AS AMENDED BY HEA 1288-2005, SECTION 83, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) As used in this section, "board" refers to either of the following:

- (1) With respect to the Indiana School for the Blind **and Visually Impaired**, the board established by IC 20-21-3-1.
- (2) With respect to the Indiana School for the Deaf, the board established by IC 20-22-3-1.

(b) As used in this section, "school" refers to either of the following:

- (1) The Indiana School for the Blind **and Visually Impaired** established by IC 20-21-2-1.
- (2) The Indiana School for the Deaf established by IC 20-22-2-1.

(c) As used in this section, "superintendent" refers to the **superintendent chief executive officer** of the school.

(d) Except as provided in subsection (f), the school is the purchasing agency for the school.

(e) Except as provided in subsection (f), the superintendent is the purchasing agent for the school for purchases with a value of not more than twenty-five thousand dollars (\$25,000).



(f) ~~Not later than October 1, 1999,~~ The Indiana department of administration and the board shall develop and implement a written policy for purchases by the school with a value of more than twenty-five thousand dollars (\$25,000).

SECTION 4. IC 10-13-3-38.5, AS AMENDED BY HEA 1288-2005, SECTION 119, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 38.5. (a) Under federal P.L.92-544 (86 Stat. 1115), the department may use an individual's fingerprints submitted by the individual for the following purposes:

(1) Determining the individual's suitability for employment with the state, or as an employee of a contractor of the state, in a position:

(A) that has a job description that includes contact with, care of, or supervision over a person less than eighteen (18) years of age;

(B) that has a job description that includes contact with, care of, or supervision over an endangered adult (as defined in IC 12-10-3-2), except the individual is not required to meet the standard for harmed or threatened with harm set forth in IC 12-10-3-2(a)(3);

(C) at a state institution managed by the office of the secretary of family and social services or state department of health;

(D) at the Indiana School for the Deaf established by IC 20-22-2-1;

(E) at the Indiana School for the Blind **and Visually Impaired** established by IC 20-21-2-1;

(F) at a juvenile detention facility;

(G) with the gaming commission under IC 4-33-3-16;

(H) with the department of financial institutions under IC 28-11-2-3; or

(I) that has a job description that includes access to or supervision over state financial or personnel data, including state warrants, banking codes, or payroll information pertaining to state employees.

(2) Identification in a request related to an application for a teacher's license submitted to the professional standards board established by IC 20-28-2-1.

An applicant shall submit the fingerprints in an appropriate format or on forms provided for the employment or license application. The department shall charge each applicant the fee established under section 28 of this chapter and by federal authorities to defray the costs associated with a search for and classification of the applicant's fingerprints. The department may forward fingerprints submitted by an applicant to the Federal Bureau of Investigation or any other agency for processing. The state personnel department or the agency to which the applicant is applying for employment or a license may receive the results of all fingerprint investigations.

(b) An applicant who is an employee of the state may not be charged under subsection (a).

(c) Subsection (a)(1) does not apply to an employee of a contractor of the state if the contract involves the construction or repair of a capital project or other public works project of the state.

SECTION 5. IC 12-12-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. The office of the secretary shall, on the first business day of each month, send a copy of a report filed under section 1 of this chapter to the following persons:

(1) For persons less than seventeen (17) years of age, to the following:

(A) The Indiana School for the Blind **and Visually Impaired**.

(B) The division of disability, aging, and rehabilitative services.

(C) The division of special education of the department of education.

(2) For persons at least seventeen (17) years of age, to the following:

(A) The division of disability, aging, and rehabilitative services.

(B) On request, organizations serving the blind **or visually impaired** and the state department of health.

SECTION 6. IC 12-12-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) On receiving a report under this chapter, the division of disability, aging, and rehabilitative services shall provide information to the visually impaired individual designated in the report concerning available state and local services.

(b) For a visually impaired individual less than seventeen (17) years of age, the Indiana School for the Blind **and Visually Impaired**:

(1) has the primary duty of initially contacting the visually impaired individual or the individual's family; and

(2) shall notify the division of disability, aging, and rehabilitative services and the department of education of the school's findings.

SECTION 7. IC 12-12-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. This chapter does not prohibit a physician or an optometrist from making a referral to a local school corporation, an agency, the Indiana School for the Blind **and Visually Impaired**, or an agency or organization working with the blind or visually impaired.

SECTION 8. IC 20-1-6-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.1. (a) There is created under the Indiana state board of education a division of special education, which shall exercise all the power and duties set out in this chapter. The governor shall appoint, upon the recommendation of the state superintendent of public instruction, a director of special education who serves at the pleasure of the governor. The amount of compensation of the director shall be fixed by the budget agency with the approval of the governor. The duties of the director are as follows:

(1) To have general supervision of all programs, classes, and schools, including those conducted by the public schools, the Indiana School for the Blind **and Visually Impaired**, the Indiana School for the Deaf, the department of correction, the state department of health, the division of disability, aging, and rehabilitative services, and the division of mental health and addiction, for children with disabilities and to coordinate the work of these schools. In addition, relative to programs for preschool children with disabilities as required under section 14.1 of this chapter, the director has general supervision over programs, classes, and schools, including those conducted by the schools or other state or local service providers as contracted for under section 14.1 of this chapter. However, general supervision does not include the determination of admission standards for the state departments, boards, or agencies authorized to provide programs or classes under this chapter.

(2) To adopt, with the approval of the Indiana state board of education, rules governing the curriculum and instruction, including licensing of personnel in the field of education, as provided by law.

(3) To inspect and rate all schools, programs, or classes for children with disabilities to maintain proper standards of personnel, equipment, and supplies.

(4) With the consent of the state superintendent of public instruction and the budget agency, to appoint and fix salaries for any assistants and other personnel needed to enable the director to accomplish the duties of the director's office.

(5) To adopt, with the approval of the Indiana state board of education, the following:

(A) Rules governing the identification and evaluation of children with disabilities and their placement under an individualized education program in a special education program.

(B) Rules protecting the rights of a child with a disability and the parents of the child with a disability in the identification, evaluation, and placement process.

(6) To make recommendations to the Indiana state board of education concerning standards and case load ranges for related services to assist each teacher in meeting the individual needs of each child according to that child's individualized education program. The recommendations may include the following:

(A) The number of teacher aides recommended for each

exceptionality included within the class size ranges.

(B) The role of the teacher aide.

(C) Minimum training recommendations for teacher aides and recommended procedures for the supervision of teacher aides.

(7) To cooperate with the interagency coordinating council established under IC 12-17-15 to ensure that the preschool special education programs required under section 14.1 of this chapter are consistent with the early intervention services program described in IC 12-17-15.

(b) The director or the Indiana state board of education may exercise authority over vocational programs for children with disabilities through a letter of agreement with the department of workforce development.

SECTION 9. IC 20-1-6-15.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15.1. (a) For the purposes of this section, "comprehensive plan" means a plan for educating all children with disabilities that a school corporation is required to educate under sections 14 through 14.1 of this chapter, and those additional children with disabilities that it elects to educate.

(b) For purposes of this section, "school corporation" includes the following:

(1) The Indiana School for the Blind and Visually Impaired board.

(2) The Indiana School for the Deaf board.

(c) The Indiana state board of education shall adopt rules under IC 4-22-2 detailing the contents of the comprehensive plan. Each school corporation shall complete and submit to the state superintendent of public instruction a comprehensive plan. School corporations operating cooperative or joint special education services may submit a single comprehensive plan. In addition, if a school corporation enters into a contractual agreement as permitted under section 14.1 of this chapter, the school corporation shall collaborate with the service provider in formulating the comprehensive plan.

(d) Notwithstanding the age limits set out in section 1 of this chapter, the Indiana state board of education may conduct a program for the early identification of children with disabilities, between the ages of birth and twenty-one (21), not served by the public schools or through a contractual agreement under section 14.1 of this chapter, and may utilize agencies that serve children with disabilities other than the public schools.

(e) The Indiana state board of education shall adopt rules under IC 4-22-2 requiring the department of correction, the state department of health, the division of disability, aging, and rehabilitative services, the Indiana School for the Blind and Visually Impaired board, the Indiana School for the Deaf board, and the division of mental health and addiction to submit to the superintendent of public instruction a plan for the provision of special education for children in programs administered by each respective agency who are entitled to a special education.

(f) The superintendent of public instruction shall furnish professional consultant services to the school corporations, the department of correction, the state department of health, the division of disability, aging, and rehabilitative services, the Indiana School for the Blind and Visually Impaired board, the Indiana School for the Deaf board, and the division of mental health and addiction to aid them in fulfilling the requirements of this section.

SECTION 10. IC 20-1-6-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) The superintendent shall appoint a state advisory council on the education of children with disabilities whose duties shall consist of providing policy guidance concerning special education and related services for children with disabilities. The superintendent shall appoint at least seventeen (17) members who shall serve for a period of four (4) years. Vacancies shall be filled in like manner for the unexpired balance of the term.

(b) The members must be citizens of Indiana who are representative of the state's population and selected on the basis of their involvement in or concern with the education of children with disabilities. A majority of the members must be individuals with disabilities or the parents of children with disabilities. Members must include the following:

(1) Parents of children with disabilities.

(2) Individuals with disabilities.

(3) Teachers.

(4) Representatives of higher education institutions that prepare special education and related services personnel.

(5) State and local education officials.

(6) Administrators of programs for children with disabilities.

(7) Representatives of state agencies involved in the financing or delivery of related services to children with disabilities, including the following:

(A) The commissioner of the state department of health or the commissioner's designee.

(B) The director of the division of disability, aging, and rehabilitative services or the director's designee.

(C) The director of the division of mental health and addiction or the director's designee.

(D) The director of the division of family and children or the director's designee.

(8) Representatives of nonpublic schools and freeway schools.

(9) One (1) or more representatives of vocational, community, or business organizations concerned with the provision of transitional services to children with disabilities.

(10) Representatives of the department of correction.

(11) A representative of each of the following:

(A) The Indiana School for the Blind and Visually Impaired board.

(B) The Indiana School for the Deaf board.

(c) The responsibilities of the state advisory council are as follows:

(1) To advise the superintendent and the board regarding all rules pertaining to children with disabilities.

(2) To recommend approval or rejection of completed comprehensive plans submitted by school corporations acting individually or on a joint school services program basis with other corporations.

(3) To advise the department of unmet needs within the state in the education of children with disabilities.

(4) To provide public comment on rules proposed by the board regarding the education of children with disabilities.

(5) To advise the department in developing evaluations and reporting data to the United States Secretary of Education under 20 U.S.C. 1418.

(6) To advise the department in developing corrective action plans to address findings identified in federal monitoring reports under 20 U.S.C. 1400 et seq.

(7) To advise the department in developing and implementing policies related to the coordination of services for children with disabilities.

(d) The council shall organize with a chairperson selected by the superintendent and meet as often as necessary to conduct the council's business at the call of the chairperson upon ten (10) days written notice but not less than four (4) times a year. Members of the council shall be entitled to reasonable amounts for expenses necessarily incurred in the performance of their duties.

(e) The superintendent shall designate the director to act as executive secretary of the council and shall furnish all professional and clerical assistance necessary for the performance of its powers and duties.

(f) The affirmative votes of a majority of the members appointed to the council are required for the council to take action.

SECTION 11. IC 20-1-6-18.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18.2. (a) The Indiana state board of education shall adopt rules under IC 4-22-2 which establish limitations on the amount of transportation which may be provided in the student's individualized education program. Unless otherwise specially shown to be essential by the child's individualized education program, in case of residency in a public or private facility, these rules shall limit the transportation required by the student's individualized education program to ~~his~~ **the student's** first entrance and final departure each school year plus round trip transportation each school holiday period and two (2) additional round trips each school year.

(b) Whenever a student is a transfer student receiving special education in a public school, the state or school corporation responsible for the payment of transfer tuition under IC 20-8.1-6.1-1

shall bear the cost of transportation required by the student's individualized education program. However, if a transfer student was counted as an eligible student for purposes of a distribution in a calendar year under IC 21-3-3.1, the transportation costs that the transferee school may charge for a school year ending in the calendar year shall be reduced by the sum of the following:

- (1) The quotient of the amount of money that the transferee school is eligible to receive under IC 21-3-3.1-2.1 for the calendar year in which the school year ends divided by the number of eligible students for the transferee school for the calendar year (as determined under IC 21-3-3.1-2.1).
- (2) The amount of money that the transferee school is eligible to receive under IC 21-3-3.1-4 for the calendar year in which the school year ends for the transportation of the transfer student during the school year.
- (c) Whenever a student receives a special education:
  - (1) in a facility operated by:
    - (A) the state department of health;
    - (B) the division of disability, aging, and rehabilitative services; or
    - (C) the division of mental health and addiction;
  - (2) at the Indiana School for the Blind **and Visually Impaired**; or
  - (3) at the Indiana School for the Deaf;

the school corporation in which the student has legal settlement shall bear the cost of transportation required by the student's individualized education program. However, if the student's legal settlement cannot be ascertained, the Indiana state board of education shall bear the cost of transportation required by the student's individualized education program.

(d) Whenever a student is placed in a private facility under section 19 of this chapter in order to receive a special education because the student's school corporation cannot provide an appropriate special education program, the school corporation in which the student has legal settlement shall bear the cost of transportation required by the student's individualized education program. However, if the student's legal settlement cannot be ascertained, the Indiana state board of education shall bear the cost of transportation required by the student's individualized education program.

SECTION 12. IC 20-8.1-4-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 22. The employment of children in the Indiana School for the Deaf and the Indiana School for the Blind **and Visually Impaired** is subject to the general restrictions imposed on child labor under this chapter.

SECTION 13. IC 20-9.1-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The state school bus committee is hereby created. The committee shall be composed of the following voting members:

- (1) The state superintendent of public instruction, or the superintendent's authorized representative, who shall serve as chairman of the committee.
- (2) The commissioner of the bureau of motor vehicles, or the commissioner's authorized representative.
- (3) The administrator of the motor carrier services division of the department of state revenue.
- (4) The director of the governor's council on impaired and dangerous driving.
- (5) A school bus driver, appointed by the state superintendent of public instruction upon the recommendation of the Indiana State Association of School Bus Drivers, Inc.
- (6) A superintendent of a school corporation, appointed by the state superintendent of public instruction upon the recommendation of the Indiana Association of Public School Superintendents.
- (7) A member of the governing body of a school corporation, appointed by the state superintendent of public instruction upon the recommendation of the Indiana School Boards Association.
- (8) A representative of the Indiana School for the Blind **and Visually Impaired** or the Indiana School for the Deaf, appointed by the state superintendent of public instruction.
- (9) A member of the School Transportation Association of Indiana, appointed by the state superintendent of public instruction upon the recommendation of the School

Transportation Association of Indiana.

(b) The state superintendent of public instruction shall designate a secretary from the department of education who shall keep the official record of the meetings and of official transactions of the committee.

SECTION 14. IC 20-10.1-15-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The postsecondary enrollment program is established for secondary school students in grades 11 and 12.

(b) A student may ~~upon approval of that student's school corporation~~ enroll in courses offered by an eligible institution under the program on a full-time or part-time basis during grade 11, grade 12, or both.

(c) If a course has been approved for secondary credit by the school corporation, a student is entitled to credit toward graduation requirements for each course the student successfully completes at that institution.

SECTION 15. IC 20-10.1-15-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. ~~(a)~~ A representative of the school corporation shall meet with each student who intends to participate in the program and discuss the following:

- ~~(1) The student's eligibility to participate in the program.~~
- ~~(2) (1) The courses in which the student is authorized to enroll.~~
- ~~(3) (2) The postsecondary credit the student earns upon successful completion of a course.~~
- ~~(4) (3) The consequences of a student's failure to successfully complete a course.~~
- ~~(5) (4) The student's schedule.~~
- ~~(6) (5) The financial obligations of the student and the school under the program.~~
- ~~(7) (6) The responsibilities of the student, the student's parent or guardian, and the school under the program.~~
- ~~(8) (7) Other matters concerning the program.~~

~~(b) The representative of the school corporation shall make a recommendation to the principal concerning the student's participation in the program.~~

~~(c) The principal shall make a determination, based on the recommendation received under subsection (b), concerning:~~

- ~~(1) the student's eligibility to participate in the program; and~~
- ~~(2) the courses approved for secondary credit.~~

~~(d) The principal shall notify the student and the superintendent of the school corporation, in writing, of the determination under subsection (c). If the principal determines that:~~

- ~~(1) the student is not eligible to participate in the program; or~~
- ~~(2) a course in which the student intends to enroll is not approved for secondary credit;~~

~~the principal must state, in writing, the reasons for that determination.~~

SECTION 16. IC 20-10.1-15-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. The governing body of each school corporation shall:

- (1) adopt policies to implement the program, based on guidelines established by the department of education; **and**
- (2) **work with postsecondary institutions to grant secondary credits for any student attending a postsecondary institution while the student is attending secondary school.**

SECTION 17. IC 20-10.1-15-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) A student ~~who is approved for participation in the program~~ may apply for enrollment to an eligible institution. The institution shall accept or reject the student based on the standards ordinarily used to decide student enrollments. However, a student ~~who is approved for participation in the program by the student's school corporation~~ may not be refused admission solely because the student has not graduated from a secondary school.

(b) The eligible institution shall promptly inform the:

- (1) student;
- (2) student's principal; and
- (3) department of education;

of ~~its~~ **the institution's** decision under subsection (a).

(c) Upon demonstration of financial need, an eligible institution may grant financial assistance to a student accepted for admission to that institution.

SECTION 18. IC 20-10.1-15-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2005] **Sec. 10.5. If a student enrolls in a course offered by an eligible institution under the program, the institution and the student's school corporation shall enter into a contract for dual credit. The contract must establish the terms and conditions under which:**

(1) the institution will award credit for specified classes successfully completed by students in the school corporation; and

(2) the school corporation will award credit for specified classes successfully completed by students at the institution.

SECTION 19. IC 20-10.1-15-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005] **Sec. 15.5. (a) Each eligible institution shall make and maintain, for each student enrolled in the program, records of the following:**

(1) The courses in which the student enrolls and the credit hours awarded for those courses.

(2) The courses that the student successfully completes and the courses that the student fails to complete.

(3) The postsecondary credit granted to the student.

(4) Other information requested by the commission for higher education.

(b) The commission for higher education is entitled to have access to the records made and maintained under subsection (a).

SECTION 20. IC 20-10.1-15-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) The department of education, in consultation with the commission for higher education, shall:

(1) establish guidelines to carry out this chapter; and

(2) evaluate the program annually and report to the Indiana state board of education concerning the program. ~~and~~

~~(3) adopt procedures for the award of grants from the postsecondary enrollment program fund established under section 16 of this chapter.~~

(b) The guidelines established under subsection (a)(1) must encourage participation by students at all achievement levels and in a variety of academic and vocational subjects.

SECTION 21. IC 20-10.1-15-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. The state board of education ~~and the commission for higher education~~ shall jointly adopt rules under IC 4-22-2 necessary to carry out this chapter.

SECTION 22. IC 20-10.1-25.3-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2.5. As used in this chapter, "school corporation" includes, except as otherwise provided in this chapter, the Indiana School for the Deaf established by IC 20-16 and the Indiana School for the Blind ~~and Visually Impaired~~ established by IC 20-15.

SECTION 23. IC 20-10.1-25.3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) The department shall list all school corporations in Indiana according to assessed valuation for property tax purposes per student in ADM, beginning with the school corporation having the lowest assessed valuation for property tax purposes per student in ADM. For purposes of the list made under this section, the Indiana School for the Deaf and the Indiana School for the Blind ~~and Visually Impaired~~ shall be considered to have the lowest assessed valuation for property tax purposes per student in ADM during the six (6) year period beginning on July 1, 2001.

(b) The department must prepare a revised list under subsection (a) before a new series of grants may begin.

(c) The department shall determine those school corporations to be placed in a group to receive a grant in a fiscal year under this chapter as follows:

(1) Beginning with the school corporation that is first on the list developed under subsection (a), the department shall continue sequentially through the list and place school corporations that qualify for a grant under section 6 of this chapter in a group until the cumulative total ADM of all school corporations in the group depletes the money that is available for grants in the fiscal year.

(2) Each fiscal year the department shall develop a new group by continuing sequentially through the list beginning with the first qualifying school corporation on the list that was not placed

in a group in the prior fiscal year.

(3) If the final group developed from the list contains substantially fewer students in ADM than available money, the department shall:

(A) prepare a revised list of school corporations under subsection (a); and

(B) place in the group qualifying school corporations from the top of the revised list.

(4) The department shall label the groups with sequential numbers beginning with "group one".

SECTION 24. IC 20-10.1-25.3-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 14. (a) This section applies in a year when a school corporation receives a grant under this chapter. The school corporation's capital projects fund budget must include an expenditure for technology that is not less than the school corporation's average annual expenditure for technology from the capital projects fund in the six (6) budget years preceding the year of the grant. If the Indiana School for the Deaf or the Indiana School for the Blind ~~and Visually Impaired~~ receives a grant under this chapter, the school's expenditures for technology in the year of the grant must exceed the school's average annual expenditure for technology in the six (6) budget years preceding the year of the grant.

(b) For each year that a school corporation fails to observe subsection (a), the school corporation forfeits a grant under this chapter. The forfeit of the grant shall occur in the first grant year after the school corporation fails to observe subsection (a).

SECTION 25. IC 20-10.1-25.3-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. A school corporation that receives a grant under this chapter must deposit the grant in the school technology fund established under IC 21-2-18. If the Indiana School for the Deaf or the Indiana School for the Blind ~~and Visually Impaired~~ receives a grant under this chapter, the school must deposit the grant in an account or fund that the school uses exclusively for the funding of technology.

SECTION 26. IC 20-15-1-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.5. "Executive" refers to the chief executive officer of the school appointed under IC 20-15-2-4.**

SECTION 27. IC 20-15-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. "School" refers to the Indiana School for the Blind ~~and Visually Impaired~~ established by IC 20-15-2-1.

SECTION 28. IC 20-15-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. The Indiana School for the Blind ~~and Visually Impaired~~ is established as a state educational resource center that includes the following:

(1) A residential and day school.

(2) Outreach services.

(3) Consultative services to local educational agencies to assist them in meeting the needs of locally enrolled students with visual disabilities.

SECTION 29. IC 20-15-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The board shall appoint the ~~superintendent~~, **chief executive officer**, subject to the approval of the governor. The ~~superintendent executive~~ serves at the pleasure of the board and may be removed for cause.

(b) The ~~superintendent executive~~ appointee must have the following qualifications:

(1) Be an educator with knowledge, skill, and ability in the appointee's profession.

(2) Have a minimum of five (5) years of experience in instruction of students with visual **impairment** disabilities.

(3) Have a master's degree or a higher degree.

(4) Meet the qualifications for an Indiana teacher's certificate in the area of visual **impairment** disabilities.

~~(5) Have a superintendent's license or obtain a superintendent's license within two (2) years of appointment by the board.~~

**(5) Have at least five (5) years experience supervising other people.**

SECTION 30. IC 20-15-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The ~~superintendent~~, **executive**, subject to the approval of the board and

IC 20-15-4, has complete responsibility for management of the school.

(b) The ~~superintendent~~ **executive** has responsibility for the following:

- (1) Direction of the education, care, safety, and well-being of all students in attendance.
- (2) Evaluation and improvement of the school staff, educational programs, and support services.
- (3) Implementation and administration of the policies, mission, and goals of the school as established by the board.
- (4) Serving as the purchasing agent for the school as provided in IC 5-22-4-8.
- (5) Implementation of budgetary matters as recommended by the board and the department of education under IC 20-15-3-10(7).
- (6) Management of the school's outreach program with local public schools.
- (7) Advocating on behalf of the school under guidelines established by the board.
- (8) Executing contracts on behalf of the school.

(c) The ~~superintendent~~ **executive** is the appointing authority for all employees necessary to properly conduct and operate the school.

SECTION 31. IC 20-15-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. Subject to:

- (1) the determination by case conference committees based on individualized education programs as defined under IC 20-1-6-1; and
- (2) the school's admissions criteria adopted by the board under IC 20-15-3-10(4);

the ~~superintendent~~ **executive** shall receive as students in the school Indiana residents who are visually disabled school age individuals.

SECTION 32. IC 20-15-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A placement review committee for the school is established. The committee consists of one (1) representative of each of the following:

- (1) The board.
- (2) The office of the secretary of family and social services.
- (3) The superintendent of public instruction.

(b) The placement review committee shall meet upon petition of an interested party to review the following:

- (1) Applications to the school denied through the process described in section 6 of this chapter.
- (2) All instances of dismissal from the school for reasons other than graduation, voluntary transition to another educational facility, or voluntary departure from the school.

(c) The ~~superintendent~~ **executive** shall serve as an adviser to the placement review committee. The ~~superintendent~~ **executive** shall provide the placement review committee with information and justification for all application denials and dismissals under review.

(d) The placement review committee may recommend that application denials or dismissals be reconsidered.

SECTION 33. IC 20-15-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. The ~~superintendent~~ **executive** may, subject to the approval of the governor and the policies of the board, receive, for the use of the school, gifts, legacies, devises, and conveyances of real or personal property that are made, given, or granted to or for the school.

SECTION 34. IC 20-15-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. The Indiana School for the Blind and Visually Impaired board is established.

SECTION 35. IC 20-15-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) The board shall do the following:

- (1) Establish policies and accountability measures for the school.
- (2) Implement this article.
- (3) Perform the duties required by IC 5-22-4-8.
- (4) Adopt rules under IC 4-22-2 to establish criteria for the admission of children with visual disabilities, including children with multiple disabilities, at the school.
- (5) Hire the ~~superintendent~~ **executive**, who serves at the pleasure of the board.
- (6) Determine the salary and benefits of the ~~superintendent~~ **executive**.

**executive.**

(7) Adopt rules under IC 4-22-2 required by this article.

(b) The board shall submit the school's biennial budget to the department of education, which shall review the proposed budget. As part of its review, the department may request and shall receive from the board, in a form as may reasonably be required by the department, all information used by the board to develop the proposed budget. If, upon review, the department determines that any part of the budget request is not supported by the information provided, the department shall meet with the board at the earliest date possible in order to reconcile the budget request. The department shall submit the reconciled budget to the budget agency and the budget committee.

SECTION 36. IC 20-15-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) ~~This section applies after March 31, 2000.~~

(b) The ~~superintendent~~ **executive** shall hire directly for those positions as approved by the state personnel department and the board any candidate the ~~superintendent~~ **executive** considers qualified to fill a position at the school. The state personnel department, in collaboration with the board, shall annually develop a list of job classifications for positions at the school for which the ~~superintendent~~ **executive** may fill a vacancy by hiring a candidate for the position based on a search for qualified candidates outside the state personnel hiring list.

SECTION 37. IC 20-16-1-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.5. "Executive" refers to the chief executive officer of the school appointed under IC 20-16-2-4.

SECTION 38. IC 20-16-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The board shall appoint the ~~superintendent~~ **chief executive officer** subject to the approval of the governor. The ~~superintendent~~ **executive** serves at the pleasure of the board and may be removed for cause.

(b) The ~~superintendent~~ **executive** appointee must have the following qualifications:

- (1) Be an educator with knowledge, skill, and ability in the appointee's profession.
- (2) Have a minimum of five (5) years of experience in instruction of students with hearing **impairment** disabilities.
- (3) Have a master's degree or a higher degree.
- (4) Meet the qualifications for an Indiana teacher's certificate in the area of hearing **impairment** disabilities.
- ~~(5) Have a superintendent's license or obtain a superintendent's license within two (2) years of appointment by the board.~~
- (5) Have at least five (5) years experience supervising other people.**

SECTION 39. IC 20-16-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The ~~superintendent~~ **executive**, subject to the approval of the board and IC 20-16-4, has complete responsibility for management of the school.

(b) The ~~superintendent~~ **executive** has responsibility for the following:

- (1) Direction of the education, care, safety, and well-being of all students in attendance.
- (2) Evaluation and improvement of the school staff, educational programs, and support services.
- (3) Implementation and administration of the policies, mission, and goals of the school as established by the board.
- (4) Serving as the purchasing agent for the school as provided in IC 5-22-4-8.
- (5) Implementation of budgetary matters as recommended by the board and the department of education under IC 20-16-3-10(7).
- (6) Management of the school's outreach program with local public schools.
- (7) Advocating on behalf of the school under guidelines established by the board.
- (8) Executing contracts on behalf of the school.

(c) The ~~superintendent~~ **executive** is the appointing authority for all employees necessary to properly conduct and operate the school.

SECTION 40. IC 20-16-2-6 IS AMENDED TO READ AS

FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. Subject to:

- (1) the determination by case conference committee based on individualized education programs, as defined under IC 20-1-6-1; and
- (2) the school's admission criteria adopted by the board under IC 20-16-3-10(4);

the ~~superintendent executive~~ shall receive as students in the school Indiana residents who are hearing disabled school age individuals.

SECTION 41. IC 20-16-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A placement review committee for the school is established. The committee consists of one (1) representative of each of the following:

- (1) The board.
- (2) The office of the secretary of family and social services.
- (3) The superintendent of public instruction.

(b) The placement review committee shall meet upon petition of an interested party to review the following:

- (1) Applications to the school denied through the process described in section 6 of this chapter.
- (2) All instances of dismissal from the school for reasons other than graduation, voluntary transition to another educational facility, or voluntary departure from the school.

(c) The ~~superintendent executive~~ shall serve as an adviser to the placement review committee. The ~~superintendent executive~~ shall provide the placement review committee with information and justification for all application denials and dismissals under review.

(d) The placement review committee may recommend that application denials or dismissals be reconsidered.

SECTION 42. IC 20-16-2-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. The ~~superintendent executive~~ may, subject to the approval of the governor and the policies of the board, receive, for the use of the school, gifts, legacies, devises, and conveyances of real and personal property that are made, given, or granted to or for the school.

SECTION 43. IC 20-16-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) The board shall do the following:

- (1) Establish policies and accountability measures for the school.
- (2) Implement this article.
- (3) Perform the duties required by IC 5-22-4-8.
- (4) Adopt rules under IC 4-22-2 to establish criteria for the admission of children with hearing disabilities, including children with multiple disabilities, at the school.
- (5) Hire the ~~superintendent executive~~, who serves at the pleasure of the board.
- (6) Determine the salary and benefits of the ~~superintendent executive~~.
- (7) Adopt rules under IC 4-22-2 required by this article.

(b) The board shall submit the school's biennial budget to the department of education, which shall review the proposed budget. As part of its review, the department may request and shall receive from the board, in a form as may reasonably be required by the department, all information used by the board to develop the proposed budget. If, upon review, the department determines that any part of the budget request is not supported by the information provided, the department shall meet with the board at the earliest date possible in order to reconcile the budget request. The department shall submit the reconciled budget to the budget agency and the budget committee.

SECTION 44. IC 20-16-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. ~~(a) This section applies after March 31, 2000.~~

~~(b) The superintendent executive shall hire directly for those positions as approved by the state personnel department and the board any candidate the superintendent executive considers qualified to fill a position at the school. The state personnel department, in collaboration with the board, shall annually develop a list of job classifications for positions at the school for which the superintendent executive may fill a vacancy by hiring a candidate for the position based on a search for qualified candidates outside the state personnel hiring list.~~

SECTION 45. IC 20-20-13-3, AS ADDED BY HEA 1288-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2005]: Sec. 3. As used in sections 13 through 24 of this chapter, "school corporation" includes, except as otherwise provided in this chapter, **the Indiana School for the Blind and Visually Impaired established by IC 20-21-2-1** and the Indiana School for the Deaf established by IC 20-22-2-1. ~~and the Indiana School for the Blind established by IC 20-21-2-1.~~

SECTION 46. IC 20-20-13-19, AS ADDED BY HEA 1288-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 19. (a) The department shall list all school corporations in Indiana according to assessed valuation for property tax purposes per student in ADM, beginning with the school corporation having the lowest assessed valuation for property tax purposes per student in ADM. For purposes of the list made under this section, **the Indiana School for the Blind and Visually Impaired established by IC 20-21-2-1** and the Indiana School for the Deaf established by IC 20-22-2-1 ~~and the Indiana School for the Blind established by IC 20-21-2-1~~ shall be considered to have the lowest assessed valuation for property tax purposes per student in ADM during the six (6) year period beginning July 1, 2001.

(b) The department must prepare a revised list under subsection (a) before a new series of grants may begin.

(c) The department shall determine those school corporations to be placed in a group to receive a grant in a fiscal year under sections 13 through 24 of this chapter as follows:

(1) Beginning with the school corporation that is first on the list developed under subsection (a), the department shall continue sequentially through the list and place school corporations that qualify for a grant under section 15 of this chapter in a group until the cumulative total ADM of all school corporations in the group depletes the money that is available for grants in the fiscal year.

(2) Each fiscal year the department shall develop a new group by continuing sequentially through the list beginning with the first qualifying school corporation on the list that was not placed in a group in the prior fiscal year.

(3) If the final group developed from the list contains substantially fewer students in ADM than available money, the department shall:

- (A) prepare a revised list of school corporations under subsection (a); and
- (B) place in the group qualifying school corporations from the top of the revised list.

(4) The department shall label the groups with sequential numbers beginning with "group one".

SECTION 47. IC 20-20-13-22, AS ADDED BY HEA 1288-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 22. (a) This section applies in a year when a school corporation receives a grant under sections 13 through 24 of this chapter. The school corporation's capital projects fund budget must include an expenditure for technology that is not less than the school corporation's average annual expenditure for technology from the capital projects fund in the six (6) budget years preceding the year of the grant. **If the Indiana School for the Blind and Visually Impaired established by IC 20-21-2-1 or the Indiana School for the Deaf established by IC 20-22-2-1 or the Indiana School for the Blind established by IC 20-21-2-1** receives a grant under sections 13 through 24 of this chapter, the school's expenditures for technology in the year of the grant must exceed the school's average annual expenditure for technology in the six (6) budget years preceding the year of the grant.

(b) For each year that a school corporation fails to observe subsection (a), the school corporation forfeits a grant under sections 13 through 24 of this chapter. The forfeit of the grant must occur in the first grant year after the school corporation fails to observe subsection (a).

SECTION 48. IC 20-20-13-24, AS ADDED BY HEA 1288-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 24. A school corporation that receives a grant under sections 13 through 24 of this chapter shall deposit the grant in the school technology fund established under IC 21-2-18. **If the Indiana School for the Blind and Visually Impaired established by IC 20-21-2-1 or the Indiana School for the Deaf established by IC 20-22-2-1 or the Indiana School for the Blind**

established by ~~IC 20-21-2-1~~ receives a grant under sections 13 through 24 of this chapter, the school shall deposit the grant in an account or fund that the school uses exclusively for the funding of technology.

SECTION 49. IC 20-21-1-2, AS ADDED BY HEA 1288-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. "Board" refers to the Indiana School for the Blind and Visually Impaired board established by IC 20-21-3-1.

SECTION 50. IC 20-21-1-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4.5. "Executive" refers to the chief executive officer of the school appointed under IC 20-21-2-4.

SECTION 51. IC 20-21-1-5, AS ADDED BY HEA 1288-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. "School" refers to the Indiana School for the Blind and Visually Impaired established by IC 20-21-2-1.

SECTION 52. IC 20-21-2-1, AS ADDED BY HEA 1288-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. The Indiana School for the Blind and Visually Impaired is established as a state educational resource center that includes the following:

- (1) A residential and day school.
- (2) Outreach services.
- (3) Consultative services to local educational agencies to assist the agencies in meeting the needs of locally enrolled students with visual disabilities.

SECTION 53. IC 20-21-2-4, AS ADDED BY HEA 1288-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The board shall appoint the ~~superintendent~~, chief executive officer, subject to the approval of the governor. The ~~superintendent~~ executive serves at the pleasure of the board and may be removed for cause.

(b) The ~~superintendent~~ executive appointee must have the following qualifications:

- (1) Be an educator with knowledge, skill, and ability in the appointee's profession.
- (2) Have at least five (5) years experience in instruction of ~~visually disabled~~ students with visual impairment disabilities.
- (3) Have a master's degree or a higher degree.
- (4) Meet the qualifications for an Indiana teacher's certificate in the area of visual ~~impairment~~ disabilities.
- ~~(5) Have a superintendent's license or obtain a superintendent's license not more than two (2) years after appointment by the board.~~
- (5) Have at least five (5) years experience supervising other individuals.**

SECTION 54. IC 20-21-2-5, AS ADDED BY HEA 1288-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) The ~~superintendent~~, executive, subject to the approval of the board and IC 20-21-4, has complete responsibility for management of the school.

(b) The ~~superintendent~~ executive has responsibility for the following:

- (1) Direction of the education, care, safety, and well-being of all students in attendance.
- (2) Evaluation and improvement of the school staff, educational programs, and support services.
- (3) Implementation and administration of the policies, mission, and goals of the school as established by the board.
- (4) Serving as the purchasing agent for the school under IC 5-22-4-8.
- (5) Implementation of budgetary matters as recommended by the board and the department of education under IC 20-21-3-10(b).
- (6) Management of the school's outreach program with local public schools.
- (7) Advocating on behalf of the school under guidelines established by the board.
- (8) Executing contracts on behalf of the school.
- (c) The ~~superintendent~~ executive is the appointing authority for all

employees necessary to properly conduct and operate the school.

SECTION 55. IC 20-21-2-6, AS ADDED BY HEA 1288-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. Subject to:

- (1) the determination by case conference committees based on individualized education programs; and
- (2) the school's admissions criteria adopted by the board under IC 20-21-3-10(a)(4);

the ~~superintendent~~ executive shall receive as students in the school Indiana residents who are visually disabled school age individuals.

SECTION 56. IC 20-21-2-7, AS ADDED BY HEA 1288-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) A placement review committee for the school is established. The placement review committee consists of one (1) representative of each of the following:

- (1) The board.
- (2) The office of the secretary of family and social services.
- (3) The state superintendent.

(b) The placement review committee shall meet upon petition of an interested party to review the following:

- (1) Applications to the school denied through the process described in section 6 of this chapter.
- (2) All instances of dismissal from the school for reasons other than graduation, voluntary transition to another educational facility, or voluntary departure from the school.

(c) The ~~superintendent~~ executive shall serve as an adviser to the placement review committee. The ~~superintendent~~ executive shall provide the placement review committee with information and justification for all application denials and dismissals under review.

(d) The placement review committee may recommend that application denials or dismissals be reconsidered.

SECTION 57. IC 20-21-2-13, AS ADDED BY HEA 1288-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. The ~~superintendent~~ executive may, subject to the approval of the governor and the policies of the board, receive, for the use of the school, gifts, legacies, devises, and conveyances of real or personal property that are made, given, or granted to or for the school.

SECTION 58. IC 20-21-3-1, AS ADDED BY HEA 1288-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. The Indiana School for the Blind and Visually Impaired board is established.

SECTION 59. IC 20-21-3-10, AS ADDED BY HEA 1288-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) The board shall do the following:

- (1) Establish policies and accountability measures for the school.
- (2) Implement this article.
- (3) Perform the duties required by IC 5-22-4-8.
- (4) Adopt rules under IC 4-22-2 to establish criteria for the admission of visually disabled children, including children with multiple disabilities, at the school.
- (5) Hire the ~~superintendent~~, executive, who serves at the pleasure of the board.
- (6) Determine the salary and benefits of the ~~superintendent~~, executive.
- (7) Adopt rules under IC 4-22-2 required by this article.

(b) The board shall submit the school's biennial budget to the department, which shall review the proposed budget. As part of its review, the department may request and shall receive from the board, in a form as may reasonably be required by the department, all information used by the board to develop the proposed budget. If, upon review, the department determines that any part of the budget request is not supported by the information provided, the department shall meet with the board at the earliest date possible in order to reconcile the budget request. The department shall submit the reconciled budget to the budget agency and the budget committee.

SECTION 60. IC 20-21-4-2, AS ADDED BY HEA 1288-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. The ~~superintendent~~ executive shall hire directly for those positions as approved by the state personnel department and the board any candidate the ~~superintendent~~



**executive** considers qualified to fill a position at the school. The state personnel department, in collaboration with the board, shall annually develop a list of job classifications for positions at the school for which the ~~superintendent~~ **executive** may fill a vacancy by hiring a candidate for the position based on a search for qualified candidates outside the state personnel hiring list.

SECTION 61. IC 20-22-1-4.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.5. "Executive" refers to the chief executive officer of the school appointed under IC 20-22-2-4.**

SECTION 62. IC 20-22-2-4, AS ADDED BY HEA 1288-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4. (a) The board shall appoint the ~~superintendent~~, chief executive officer, subject to the approval of the governor. The ~~superintendent~~ executive serves at the pleasure of the board and may be removed for cause.**

**(b) The ~~superintendent~~ executive appointee must have the following qualifications:**

- (1) Be an educator with knowledge, skill, and ability in the appointee's profession.**
- (2) Have at least five (5) years experience in instruction of ~~hearing disabled~~ students with hearing impairment disabilities.**
- (3) Have a master's degree or a higher degree.**
- (4) Meet the qualifications for an Indiana teacher's certificate in the area of hearing impairment disabilities.**
- (5) ~~Have a superintendent's license or obtain a superintendent's license not more than two (2) years after appointment by the board.~~**
- (5) Have at least five (5) years experience supervising other individuals.**

SECTION 63. IC 20-22-2-5, AS ADDED BY HEA 1288-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5. (a) The ~~superintendent~~, executive, subject to the approval of the board and IC 20-21-4, has complete responsibility for management of the school.**

**(b) The ~~superintendent~~ executive has responsibility for the following:**

- (1) Direction of the education, care, safety, and well-being of all students in attendance.**
- (2) Evaluation and improvement of the school staff, educational programs, and support services.**
- (3) Implementation and administration of the policies, mission, and goals of the school as established by the board.**
- (4) Serving as the purchasing agent for the school under IC 5-22-4-8.**
- (5) Implementation of budgetary matters as recommended by the board and the department of education under IC 20-22-3-10(b).**
- (6) Management of the school's outreach program with local public schools.**
- (7) Advocating on behalf of the school under guidelines established by the board.**
- (8) Executing contracts on behalf of the school.**

**(c) The ~~superintendent~~ executive is the appointing authority for all employees necessary to properly conduct and operate the school.**

SECTION 64. IC 20-22-2-6, AS ADDED BY HEA 1288-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 6. Subject to:**

- (1) the determination by case conference committees based on individualized education programs; and**
- (2) the school's admissions criteria adopted by the board under IC 20-22-3-10(a)(4);**

the ~~superintendent~~ **executive** shall receive as students in the school Indiana residents who are hearing disabled school age individuals.

SECTION 65. IC 20-22-2-7, AS ADDED BY HEA 1288-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 7. (a) A placement review committee for the school is established. The placement review committee consists of one (1) representative of each of the following:**

- (1) The board.**
- (2) The office of the secretary of family and social services.**

**(3) The state superintendent.**

**(b) The placement review committee shall meet upon petition of an interested party to review the following:**

- (1) Applications to the school denied through the process described in section 6 of this chapter.**
- (2) All instances of dismissal from the school for reasons other than graduation, voluntary transition to another educational facility, or voluntary departure from the school.**

**(c) The ~~superintendent~~ executive shall serve as an adviser to the placement review committee. The ~~superintendent~~ executive shall provide the placement review committee with information and justification for all application denials and dismissals under review.**

**(d) The placement review committee may recommend that application denials or dismissals be reconsidered.**

SECTION 66. IC 20-22-2-13, AS ADDED BY HEA 1288-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 13. The ~~superintendent~~ executive may, subject to the approval of the governor and the policies of the board, receive, for the use of the school, gifts, legacies, devises, and conveyances of real or personal property that are made, given, or granted to or for the school.**

SECTION 67. IC 20-22-3-10, AS ADDED BY HEA 1288-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 10. (a) The board shall do the following:**

- (1) Establish policies and accountability measures for the school.**
- (2) Implement this article.**
- (3) Perform the duties required by IC 5-22-4-8.**
- (4) Adopt rules under IC 4-22-2 to establish criteria for the admission of hearing disabled children, including children with multiple disabilities, at the school.**
- (5) Hire the ~~superintendent~~, executive, who serves at the pleasure of the board.**
- (6) Determine the salary and benefits of the ~~superintendent~~, executive.**
- (7) Adopt rules under IC 4-22-2 required by this article.**

**(b) The board shall submit the school's biennial budget to the department, which shall review the proposed budget. As part of its review, the department may request and shall receive from the board, in a form as may reasonably be required by the department, all information used by the board to develop the proposed budget. If, upon review, the department determines that any part of the budget request is not supported by the information provided, the department shall meet with the board at the earliest date possible in order to reconcile the budget request. The department shall submit the reconciled budget to the budget agency and the budget committee.**

SECTION 68. IC 20-22-4-2, AS ADDED BY HEA 1288-2005, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2. The ~~superintendent~~ executive shall hire directly for those positions as approved by the state personnel department and the board any candidate the ~~superintendent~~ executive considers qualified to fill a position at the school. The state personnel department, in collaboration with the board, shall annually develop a list of job classifications for positions at the school for which the ~~superintendent~~ executive may fill a vacancy by hiring a candidate for the position based on a search for qualified candidates outside the state personnel hiring list.**

SECTION 69. IC 20-27-3-1, AS ADDED BY HEA 1288-2005, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1. (a) The state school bus committee is established. The committee has the following voting members:**

- (1) The state superintendent or the state superintendent's authorized representative, who serves as chairperson of the committee.**
- (2) The commissioner of the bureau of motor vehicles, or the commissioner's authorized representative.**
- (3) The administrator of the motor carrier services division of the department of state revenue.**
- (4) The director of the governor's council on impaired and dangerous driving.**
- (5) A school bus driver appointed by the state superintendent**

upon the recommendation of the Indiana State Association of School Bus Drivers, Inc.

(6) A superintendent of a school corporation appointed by the state superintendent upon the recommendation of the Indiana Association of Public School Superintendents.

(7) A member of the governing body of a school corporation appointed by the state superintendent upon the recommendation of the Indiana School Boards Association.

(8) A representative of the Indiana School for the Blind **and Visually Impaired** or the Indiana School for the Deaf appointed by the state superintendent.

(9) A member of the School Transportation Association of Indiana appointed by the state superintendent upon the recommendation of the School Transportation Association of Indiana.

(b) The state superintendent shall designate a secretary from the department who shall keep the official record of the meetings and of official transactions of the committee.

SECTION 70. IC 20-30-11-4, AS ADDED BY HEA 1288-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The postsecondary enrollment program is established for secondary school students in grades 11 and 12.

(b) A student may ~~upon approval of the student's school corporation~~, enroll in courses offered by an eligible institution under the program on a full-time or part-time basis during grade 11 or grade 12, or both.

(c) If a school corporation has approved a course offered by an eligible institution for secondary credit, a student is entitled to credit toward graduation requirements for each course the student successfully completes at the eligible institution.

SECTION 71. IC 20-30-11-7, AS ADDED BY HEA 1288-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. ~~(a)~~ A representative of the school corporation shall meet with each student who intends to participate in the program and discuss the following:

~~(1) The student's eligibility to participate in the program.~~

~~(2) (1) The courses in which the student is authorized to enroll.~~  
~~(3) (2) The postsecondary credit the student earns upon successful completion of a course.~~

~~(4) (3) The consequences of a student's failure to successfully complete a course.~~

~~(5) (4) The student's schedule.~~

~~(6) (5) The financial obligations of the student and the school under the program.~~

~~(7) (6) The responsibilities of the student, the student's parent, and the school under the program.~~

~~(8) (7) Other matters concerning the program.~~

~~(b) The representative of the school corporation shall make a recommendation to the principal concerning the student's participation in the program.~~

~~(c) Based on the recommendation received under subsection (b), the principal shall determine:~~

~~(1) the student's eligibility to participate in the program; and~~

~~(2) the courses approved for secondary credit.~~

~~(d) The principal shall notify the student and the superintendent, in writing, of the determination under subsection (c): If the principal determines that:~~

~~(1) the student is not eligible to participate in the program; or~~

~~(2) a course in which the student intends to enroll is not approved for secondary credit;~~

~~the principal must state, in writing, the reasons for that determination.~~

SECTION 72. IC 20-30-11-8, AS ADDED BY HEA 1288-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. The governing body of each school corporation shall:

(1) adopt policies to implement the program, based on guidelines established by the department; **and**

(2) **work with eligible institutions to grant secondary credits to a student who attends a postsecondary institution while the student is also attending secondary school.**

SECTION 73. IC 20-30-11-10, AS ADDED BY HEA 1288-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS

[EFFECTIVE JULY 1, 2005]: Sec. 10. (a) A student ~~who is approved for participation in the program~~ may apply for enrollment to an eligible institution. The eligible institution shall accept or reject the student based on the standards ordinarily used to decide student enrollments. However, a student ~~who is approved for participation in the program by the student's school corporation~~ may not be refused admission solely because the student has not graduated from a secondary school.

(b) The eligible institution shall promptly inform the:

(1) student;

(2) student's principal; and

(3) department;

of the decision under subsection (a).

(c) Upon demonstration of financial need, an eligible institution may grant financial assistance to a student accepted for admission to the eligible institution.

SECTION 74. IC 20-30-11-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005] **Sec. 10.5. If a student enrolls in a course offered by an eligible institution under the program, the institution and the student's school corporation shall enter into a contract for dual credit. The contract must establish the terms and conditions under which:**

**(1) the institution will award credit for specified classes successfully completed by students in the school corporation; and**

**(2) the school corporation will award credit for specified classes successfully completed by students at the institution.**

SECTION 75. IC 20-30-11-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005] **Sec. 15.5. (a) Each eligible institution shall make and maintain, for each student enrolled in the program, records of the following:**

**(1) The courses in which the student enrolls and the credit hours awarded for those courses.**

**(2) The courses that the student successfully completes and the courses that the student fails to complete.**

**(3) The postsecondary credit granted to the student.**

**(4) Other information requested by the commission for higher education.**

**(b) The commission for higher education is entitled to have access to the records made and maintained under subsection (a).**

SECTION 76. IC 20-30-11-17, AS ADDED BY HEA 1288-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. (a) The department, **in consultation with the commission for higher education**, shall:

(1) establish guidelines to carry out this chapter; **and**

(2) evaluate the program annually and report to the state board concerning the program. **and**

~~(3) adopt procedures for the award of grants from the postsecondary enrollment program fund established by section 16 of this chapter.~~

(b) The guidelines established under subsection (a)(1) must encourage participation by students at all achievement levels and in a variety of academic and vocational subjects.

SECTION 77. IC 20-30-11-18, AS ADDED BY HEA 1288-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 18. The state board **and the commission for higher education** shall adopt rules under IC 4-22-2 to carry out this chapter.

SECTION 78. IC 20-33-3-33, AS ADDED BY HEA 1288-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 33. The employment of children by the:

(1) Indiana School for the Deaf; and

(2) Indiana School for the Blind **and Visually Impaired**;

is subject to the general restrictions imposed on child labor under this chapter.

SECTION 79. IC 20-35-2-1, AS ADDED BY HEA 1288-2005, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) There is established under the state board a division of special education. The division shall exercise all the power and duties set out in this chapter, IC 20-35-3

through IC 20-35-6, and IC 20-35-8.

(b) The governor shall appoint, upon the recommendation of the state superintendent, a director of special education who serves at the pleasure of the governor. The amount of compensation of the director shall be determined by the budget agency with the approval of the governor. The director has the following duties:

(1) To do the following:

(A) Have general supervision of all programs, classes, and schools for children with disabilities, including those conducted by public schools, the Indiana School for the Blind **and Visually Impaired**, the Indiana School for the Deaf, the department of correction, the state department of health, the division of disability, aging, and rehabilitative services, and the division of mental health and addiction.

(B) Coordinate the work of schools described in clause (A). For programs for preschool children with disabilities as required under IC 20-35-4-9, have general supervision over programs, classes, and schools, including those conducted by the schools or other state or local service providers as contracted for under IC 20-35-4-9. However, general supervision does not include the determination of admission standards for the state departments, boards, or agencies authorized to provide programs or classes under this chapter.

(2) To adopt, with the approval of the state board, rules governing the curriculum and instruction, including licensing of personnel in the field of education, as provided by law.

(3) To inspect and rate all schools, programs, or classes for children with disabilities to maintain proper standards of personnel, equipment, and supplies.

(4) With the consent of the state superintendent and the budget agency, to appoint and determine salaries for any assistants and other personnel needed to enable the director to accomplish the duties of the director's office.

(5) To adopt, with the approval of the state board, the following:

(A) Rules governing the identification and evaluation of children with disabilities and their placement under an individualized education program in a special education program.

(B) Rules protecting the rights of a child with a disability and the parents of the child with a disability in the identification, evaluation, and placement process.

(6) To make recommendations to the state board concerning standards and case load ranges for related services to assist each teacher in meeting the individual needs of each child according to that child's individualized education program. The recommendations may include the following:

(A) The number of teacher aides recommended for each exceptionality included within the class size ranges.

(B) The role of the teacher aide.

(C) Minimum training recommendations for teacher aides and recommended procedures for the supervision of teacher aides.

(7) To cooperate with the interagency coordinating council established by IC 12-17-15-7 to ensure that the preschool special education programs required IC 20-35-4-9 are consistent with the early intervention services program described in IC 12-17-15.

(c) The director or the state board may exercise authority over vocational programs for children with disabilities through a letter of agreement with the department of workforce development.

SECTION 80. IC 20-35-3-1, AS ADDED BY HEA 1288-2005, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) The state superintendent shall appoint a state advisory council on the education of children with disabilities. The state advisory council's duties consist of providing policy guidance concerning special education and related services for children with disabilities. The state superintendent shall appoint at least seventeen (17) members who serve for a term of four (4) years. Vacancies shall be filled in the same manner for the unexpired balance of the term.

(b) The members of the state advisory council must be:

(1) citizens of Indiana;

(2) representative of the state's population; and

(3) selected on the basis of their involvement in or concern with the education of children with disabilities.

(c) A majority of the members of the state advisory council must be individuals with disabilities or the parents of children with disabilities. Members must include the following:

(1) Parents of children with disabilities.

(2) Individuals with disabilities.

(3) Teachers.

(4) Representatives of higher education institutions that prepare special education and related services personnel.

(5) State and local education officials.

(6) Administrators of programs for children with disabilities.

(7) Representatives of state agencies involved in the financing or delivery of related services to children with disabilities, including the following:

(A) The commissioner of the state department of health or the commissioner's designee.

(B) The director of the division of disability, aging, and rehabilitative services or the director's designee.

(C) The director of the division of mental health and addiction or the director's designee.

(D) The director of the division of family and children or the director's designee.

(8) Representatives of nonpublic schools and freeway schools.

(9) One (1) or more representatives of vocational, community, or business organizations concerned with the provision of transitional services to children with disabilities.

(10) Representatives of the department of correction.

(11) A representative from each of the following:

(A) The Indiana School for the Blind **and Visually Impaired** board.

(B) The Indiana School for the Deaf board.

(d) The responsibilities of the state advisory council are as follows:

(1) To advise the state superintendent and the state board regarding all rules pertaining to children with disabilities.

(2) To recommend approval or rejection of completed comprehensive plans submitted by school corporations acting individually or on a joint school services program basis with other corporations.

(3) To advise the department of unmet needs within Indiana in the education of children with disabilities.

(4) To provide public comment on rules proposed by the state board regarding the education of children with disabilities.

(5) To advise the department in developing evaluations and reporting data to the United States Secretary of Education under 20 U.S.C. 1418.

(6) To advise the department in developing corrective action plans to address findings identified in federal monitoring reports under 20 U.S.C. 1400 et seq.

(7) To advise the department in developing and implementing policies related to the coordination of services for children with disabilities.

(e) The state advisory council shall do the following:

(1) Organize with a chairperson selected by the state superintendent.

(2) Meet as often as necessary to conduct the council's business at the call of the chairperson, upon ten (10) days written notice, but not less than four (4) times a year.

(f) Members of the state advisory council are entitled to reasonable amounts for expenses necessarily incurred in the performance of their duties.

(g) The state superintendent shall do the following:

(1) Designate the director to act as executive secretary of the state advisory council.

(2) Furnish all professional and clerical assistance necessary for the performance of the state advisory council's powers and duties.

(h) The affirmative votes of a majority of the members appointed to the state advisory council are required for the state advisory council to take action.

SECTION 81. IC 20-35-4-10, AS AMENDED BY SEA 397-2005, SECTION 46, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) For purposes of this section, "comprehensive plan" means a plan for educating the following:

- (1) All children with disabilities that a school corporation is required to educate under sections 8 through 9 of this chapter.
- (2) The additional children with disabilities that the school corporation elects to educate.

(b) For purposes of this section, "school corporation" includes the following:

- (1) The Indiana School for the Blind and Visually Impaired board.
- (2) The Indiana School for the Deaf board.

(c) The state board shall adopt rules under IC 4-22-2 detailing the contents of the comprehensive plan. Each school corporation shall complete and submit to the state superintendent a comprehensive plan. School corporations operating cooperative or joint special education services may submit a single comprehensive plan. In addition, if a school corporation enters into a contractual agreement as permitted under section 9 of this chapter, the school corporation shall collaborate with the service provider in formulating the comprehensive plan.

(d) Notwithstanding the age limits set out in IC 20-35-1-2, the state board may:

- (1) conduct a program for the early identification of children with disabilities, between the ages of birth and less than twenty-two (22) years of age not served by the public schools or through a contractual agreement under section 9 of this chapter; and
- (2) use agencies that serve children with disabilities other than the public schools.

(e) The state board shall adopt rules under IC 4-22-2 requiring the:

- (1) department of correction;
- (2) state department of health;
- (3) division of disability, aging, and rehabilitative services;
- (4) Indiana School for the Blind and Visually Impaired board;
- (5) Indiana School for the Deaf board; and
- (6) division of mental health and addiction;

to submit to the state superintendent a plan for the provision of special education for children in programs administered by each respective agency who are entitled to a special education.

(f) The state superintendent shall furnish professional consultant services to school corporations and the entities listed in subsection (e) to aid them in fulfilling the requirements of this section.

SECTION 82. IC 20-35-8-2, AS AMENDED BY SEA 397-2005, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) The state board shall adopt rules under IC 4-22-2 to establish limits on the amount of transportation that may be provided in the student's individualized education program. Unless otherwise specially shown to be essential by the child's individualized education program, in case of residency in a public or private facility, these rules must limit the transportation required by the student's individualized education program to the following:

- (1) The student's first entrance and final departure each school year.
- (2) Round trip transportation each school holiday period.
- (3) Two (2) additional round trips each school year.

(b) If a student is a transfer student receiving special education in a public school, the state or school corporation responsible for the payment of transfer tuition under IC 20-26-11-1 through IC 20-26-11-4 shall pay the cost of transportation required by the student's individualized education program. However, if a transfer student was counted as an eligible student for purposes of a distribution in a calendar year under IC 21-3-3.1, the transportation costs that the transferee school may charge for a school year ending in the calendar year shall be reduced by the sum of the following:

- (1) The quotient of:
  - (A) the amount of money that the transferee school is eligible to receive under IC 21-3-3.1-2.1 for the calendar year in which the school year ends; divided by

(B) the number of eligible students for the transferee school for the calendar year (as determined under IC 21-3-3.1-2.1).

(2) The amount of money that the transferee school is eligible to receive under IC 21-3-3.1-4 for the calendar year in which the school year ends for the transportation of the transfer student during the school year.

(c) If a student receives a special education:

- (1) in a facility operated by:
  - (A) the state department of health;
  - (B) the division of disability, aging, and rehabilitative services; or
  - (C) the division of mental health and addiction;
- (2) at the Indiana School for the Blind and Visually Impaired; or
- (3) at the Indiana School for the Deaf;

the school corporation in which the student has legal settlement shall pay the cost of transportation required by the student's individualized education program. However, if the student's legal settlement cannot be ascertained, the state board shall pay the cost of transportation required by the student's individualized education program.

(d) If a student is placed in a private facility under IC 20-35-6-2 in order to receive a special education because the student's school corporation cannot provide an appropriate special education program, the school corporation in which the student has legal settlement shall pay the cost of transportation required by the student's individualized education program. However, if the student's legal settlement cannot be ascertained, the state board shall pay the cost of transportation required by the student's individualized education program.

SECTION 83. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 20-10.1-15-9; IC 20-10.1-15-16; IC 20-12-17-3; IC 20-15-1-7; IC 20-16-1-7; IC 20-21-1-7; IC 20-22-1-7; IC 20-30-11-9; IC 20-30-11-16.

(Reference is to EHB 1314 as printed March 11, 2005.)

BEHNING	LUBBERS
PORTER	SIPES
House Conferees	Senate Conferees

The conference committee report was filed and read a first time.

## OTHER BUSINESS ON THE SPEAKER'S TABLE

### HOUSE MOTION

Mr. Speaker: I move that Representative Mays be removed as coauthor of Engrossed House Bill 1097.

BORROR

Motion prevailed.

### HOUSE MOTION

Mr. Speaker: I move that Representative Koch be added as coauthor of Engrossed House Bill 1265.

POND

Motion prevailed.

### HOUSE MOTION

Mr. Speaker: I move that Representatives T. Adams, Aguilera, Alderman, Austin, Avery, Ayres, Bardon, Bauer, Becker, Behning, Bischoff, Borders, Borrer, Bosma, Bottorff, Bright, C. Brown, T. Brown, Buck, Budak, Buell, Cheney, Cherry, Cochran, Crawford, Crooks, Davis, Day, Denbo, Dickinson, Dobis, Dodge, Duncan, Dvorak, Espich, Foley, Friend, Frizzell, Fry, GiaQuinta, Goodin, Gutwein, E. Harris, T. Harris, Heim, Hinkle, Hoffman, Hoy, Kersey, Klinker, Koch, Kromkowski, Kuzman, L. Lawson, Lehe, Leonard, J. Lutz, Mahern, Mays, McClain, Messer, Micon, Moses, Murphy, Neese, Noe, Orentlicher, Oxley, Pelath, Pflum, Pierce, Pond, Porter, Reske, Richardson, Ripley, Robertson, Ruppel, Saunders, J. Smith, V. Smith, Stevenson, Stilwell, Stutzman, Summers, Thomas, Thompson, Tincher, Torr, Turner, Ulmer, VanHaften, Walorski, Welch, Whetstone, Wolkins, Woodruff, and Yount be added as coauthors of House Resolution 81.

BURTON

Motion prevailed.

On the motion of Representative Micon, the House adjourned at 7:35 p.m., this twenty-sixth day of April, 2005, until Wednesday, April 27, 2005, at 10:00 a.m.

BRIAN C. BOSMA  
Speaker of the House of Representatives

M. CAROLINE SPOTTS  
Principal Clerk of the House of Representatives